

# **CUSTOMS BULLETIN AND DECISIONS**

**Weekly Compilation of  
Decisions, Rulings, Regulations, Notices, and Abstracts  
Concerning Customs and Related Matters of the  
U.S. Customs Service  
U.S. Court of Appeals for the Federal Circuit  
and  
U.S. Court of International Trade**

**VOL. 31**

**APRIL 2, 1997**

**NO. 14**

*This issue contains:*

U.S. Customs Service

General Notices

U.S. Court of International Trade

Slip Op. 97-28 Through 97-30

Abstracted Decisions:

Classification: C97/39 Through C97/43

## NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Finance, Logistics Division, National Support Services Center, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

**Please visit the U.S. Customs Web at:  
<http://www.customs.ustreas.gov>**

# U.S. Customs Service

## *General Notices*

### DATES AND DRAFT AGENDA OF THE EIGHTEENTH SESSION OF THE HARMONIZED SYSTEM COMMITTEE OF THE WORLD CUSTOMS ORGANIZATION

AGENCIES: U.S. Customs Service, Department of the Treasury, and U.S. International Trade Commission.

ACTION: Publication of the dates and draft agenda for the nineteenth session of the Harmonized System Committee of the World Customs Organization.

SUMMARY: This notice sets forth the dates and draft agenda for the next session of the Harmonized System Committee of the World Customs Organization.

DATE: March 14, 1997

FOR FURTHER INFORMATION CONTACT: Myles B. Harmon, Director, International Agreements Staff, U.S. Customs Service (202-482-7000) or Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission (202-205-2592).

#### SUPPLEMENTARY INFORMATION:

##### BACKGROUND

The United States is a contracting party to the International Convention on the Harmonized Commodity Description and Coding System ("Harmonized System Convention"). The Harmonized Commodity Description and Coding System ("Harmonized System"), an international nomenclature system, forms the core of the U.S. tariff, the Harmonized Tariff Schedule of the United States. The Harmonized System Convention is under the jurisdiction of the World Customs Organization (established as the Customs Cooperation Council).

Article 6 of the Harmonized System Convention establishes a Harmonized System Committee ("HSC"). The HSC is composed of representatives from each of the contracting parties to the Harmonized System Convention. The HSC's responsibilities include issuing classification decisions on the interpretation of the Harmonized System.

Those decisions may take the form of published tariff classification opinions concerning the classification of an article under the Harmonized System or amendments to the Explanatory Notes to the Harmonized System. The HSC also considers amendments to the legal text of the Harmonized System. The HSC meets twice a year in Brussels, Belgium. The next session of the HSC will be its nineteenth, and it will be held from April 7-18, 1997.

In accordance with section 1210 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418), the Department of the Treasury, represented by the U.S. Customs Service, the Department of Commerce, represented by the Census Bureau, and the U.S. International Trade Commission ("ITC"), jointly represent the U.S. government at the sessions of the HSC. The Customs Service representative serves as the head of the delegation at the sessions of the HSC.

Set forth below is the draft agenda for the next session of the HSC. Copies of available agenda-item documents may be obtained from either the Customs Service or the ITC. Comments on agenda items may be directed to the above-listed individuals.

MYLES B. HARMON,  
*Director,*  
*International Agreements Staff.*

[Attachment: Attachment A]



Attachment A  
40.863 EDRAFT AGENDA FOR THE NINETEENTH SESSION OF THE  
HARMONIZED SYSTEM COMMITTEE

Monday, April 7 (10 a.m.) to Friday, April 18, 1997.

N.B. Questions under Agenda Item VI will be examined first by the presessional Working Party (Thursday, 3 April (10 a.m.) to Friday 4 April 1997).

## I

## ADOPTION OF THE AGENDA

Draft Agenda .....	Doc. 40.863
Draft Timetable .....	Doc. 40.864

## II

## REPORT BY THE SECRETARIAT

1. Position regarding Contracting Parties to the HS Convention and implementation of the 1992 and 1996 amendments; acceptances of Recommendations; list of administrations applying an HS-based tariff or statistical nomenclature; list of HS-based tariffs and tariff or statistical nomenclatures available in the Secretariat .....	Doc. 40.865
2. Report of the Policy Commission (36th Session) and decisions taken by the Council at its 89th Session .....	Doc. 40.866
3. Approval of decisions taken by the Harmonized System Committee at its 18th Session .....	Docs. 40.867 40.914
4. Technical assistance activities of the Nomenclature and Classification Directorate .....	Doc. 40.868
5. Co-operation with other international organizations .....	Doc 40.869
6. Other .....	

## III

## GENERAL QUESTIONS

1. Creation of a database of HS documentation .....	Doc. 40.877
2. Co-operation with the Technical Committee on Rules of Origin .....	Doc. 40.871
3. Application of the Harmonized System in areas other than Customs tariffs and trade statistics .....	Doc. 40.406
4. Project for improving classification work and related infrastructure .....	Doc. 40.873
5. International co-operation for the development of audiovisual training materials on the Harmonized System .....	Doc. 40.874
6. Timing of the next HS amendments and future programme .....	Docs. 40.875 40.884
7. United States proposal to amend Rule 4 of the Rules of Procedure for the HS Review Sub-Committee .....	Doc. 40.876
8. Other .....	Doc. 41.105

## IV

## REPORT OF THE SCIENTIFIC SUB-COMMITTEE

1. Report of the 12th Session of the Scientific Sub-Committee .....	Doc. 40.870
2. Matters for decisions by the Harmonized System Committee .....	Doc. 40.878
3. Possible inclusion of chemical structures in the Explanatory Notes to Chapter 29 .....	Doc. 40.929
4. Possible amendment of the Explanatory Note to heading 38.22 .....	Doc. 40.918
5. Classification of aminoethyl nitrate .....	Doc. 40.940

## V

*REPORT OF THE HS REVIEW SUB-COMMITTEE*

1. Report of the 15th Session of the Harmonized System Review Sub-Committee .....	Doc. 40.920
2. Matters for decisions by the Harmonized System Committee .....	Doc. 40.881
3. Classification of broken pieces of brick or concrete .....	Doc. 41.109
4. Classification of linear motion guides .....	Doc. 41.110

## VI

*REPORT OF THE PRESESSIONAL WORKING PARTY*

W.P. 1. Amendments to the Compendium of Classification Opinions arising from the classification of soluble coffee mixed with stevioside in subheading 2101.12 .....	Doc. 40.879
W.P. 2. Amendments to the Explanatory Notes arising from the classification of certain can sealing compounds in heading 32.14 .....	Doc. 40.882
W.P. 3. Amendments to the Compendium of Classification Opinions arising from the classification of certain GEL preparations in subheading 3824.90 .....	Doc. 40.883
W.P. 4. Deleted	
W.P. 5. Deleted	
W.P. 6. Amendments to the Compendium of Classification Opinions arising from the classification of flooring panels in heading 44.12 .....	Doc. 40.887
W.P. 7. Amendments to the Compendium of Classification Opinions and the Explanatory Notes arising from the classification of a seat cover in subheading 6304.91 .....	Doc. 40.888
W.P. 8. Amendments to the Compendium of Classification Opinions arising from the classification of the "PTCV" multimedia personal computer in subheading 8471.49 .....	Doc. 40.889
W.P. 9. Amendments to the Compendium of Classification Opinions arising from the classification of different elements of a satellite television reception apparatus in subheading 8528.12, 8529.10 and 8543.89 .....	Doc. 40.890
W.P. 10. Deleted	
W.P. 11. Amendments to the Compendium of Classification Opinions arising from the classification of the "Media Composer 1000" system in subheading 8543.89 .....	Doc. 40.892

## VII

*FURTHER STUDIES*

1. Classification of tropical fruit preserved by the addition of sugar and drying .....	Docs. 40.451 40.645 40.699 (HSC/18)
2. Possible new subheadings for "concentrated fruit juices" .....	Doc. 40.886
3. Possible amendment of the Explanatory Note to heading 22.08 .....	Docs. 40.893 41.107
4. Classification of "topped" crude oils used as refinery feedstocks .....	Doc. 40.894
5. Classification of certain transdermic administration systems .....	Docs. 40.455 40.561 40.626 40.749 (HSC/18)
6. Possible amendments to the Nomenclature in order to clarify the classification of certain GEL preparations .....	Doc. 40.895
7. Possible amendments to the structure of subheading 3206.4 .....	Docs. 40.437 40.718 (HSC/18)
8. Amendments to the Explanatory Note to heading 33.02 .....	Doc. 40.896

*FURTHER STUDIES—continued*

9. Possible amendment to the Explanatory Note to heading 34.02 to clarify the classification of liquid soap.....	Doc. 40.897
10. Possible amendment of the Explanatory Notes to heading 38.24 concerning salt for curing or salting.....	Doc. 40.931
11. Scope of heading 48.02 (Reservation by Brazil).....	Doc. 40.546 (HSC/18)
12. Classification of "Children's Bible Book (Look, Listen, Read)".....	Doc. 40.903
13. Amendments to the Explanatory Notes arising from the classification of certain magnesium carbon ("Mag C") bricks in heading 68.15.....	Doc. 40.904
14. Classification of laminated steel and laminated aluminium (RSC) ..	Doc. 40.905
15. Amendments to the Nomenclature and the Explanatory Notes arising from the classification of industrial microwave ovens.....	Docs. 40.906 40.938
16. Classification of feed horns (wave guides).....	Doc. 40.907
17. Amendments to the Explanatory Notes to clarify the distinction between headings 85.25 and 85.28 and the classification of receivers and reception systems for satellite television.....	Doc. 40.908
18. Classification of "pick-up" vehicles.....	Docs. 40.625 (HSC/18) 40.909
19. Classification of the "FIRE 9000" and "FIRE 1000" laser photo-plotters .....	Docs. 40.266 (HSC/17) 40.726 (HSC/18) 40.885
20. Possibility of establishing an interconnection between the HS and CITES .....	Docs. 40.911 40.935
21. Proposed Explanatory Note amendments concerning narcotic drugs, psychotropic substances and their precursors.....	Doc. 40.912
22. Classification of "Natterman laxative tea No. 13" (Reservation by Switzerland) .....	Docs. 40.913 41.106

## VIII

*NEW QUESTIONS*

1. Classification of various items of networking equipment.....	Docs. 40.140 (HSC/17) 40.695 (HSC/18) 40.926
2. Classification of discs for laser reading systems.....	Doc. 40.264 (HSC/17)
3. Classification of a hydrogen peroxide manufacturing plant.....	Docs. 40.091 (HSC/17) 40.477 (HSC/18) 40.925
4. Classification of certain butterfat mixtures.....	Docs. 40.555 40.629 (HSC/18) 40.927
5. Classification of premixes containing antibiotics.....	Doc. 40.552 (HSC/18)
6. Possible amendment of Note 1(a) to Chapter 30 concerning the term "dietetic foods" .....	Doc. 40.609 (HSC/18)

*NEW QUESTIONS—continued*

7. Classification of portable clamping workbenches .....	Docs. 40.608 40.696 (HSC/18) 41.104
8. Classification of the "ENW-9500 Fast Ethernet Adapter" .....	Doc. 40.464 (HSC/18)
9. Classification of "Mediamaster DVB 9500C" .....	Doc. 40.554 (HSC/18)
10. Classification of a jack-up drilling rig "Deepsea Matdrill" .....	Doc. 40.553 (HSC/18)
11. Classification of parts of photo-copying apparatus (RSC) .....	Doc. 40.639 (HSC/18)
12. Classification of liquid crystal displays (RSC) .....	Doc. 40.640 (HSC/18) 41.101
13. Classification of bottle preforms of plastics (RSC) .....	Docs. 40.641 40.794 (HSC/18)
14. Classification of cored wire (RSC) .....	Doc. 40.643 (HSC/18)
15. Classification of "domestic" humidifiers and dehumidifiers (RSC) ....	Docs. 40.644 (HSC/18) 40.921
16. Classification of "split systems" type air conditioning machines (RSC) .	Docs. 40.647 40.697 (HSC/18)
17. Possible amendments to the legal texts and Explanatory Notes concerning nectarines .....	Doc. 40.691 (HSC/18 Add.)
18. Classification of certain bentonite based products .....	Doc. 40.720 (HSC/18 Add.)
19. Classification of uppers attached to soles other than outer soles .....	Doc. 40.630 (HSC/18 Add.)
20. Possible amendments to subheadings of heading 68.04 .....	Doc. 40.635 (HSC/18 Add.)
21. Possible alignment of the texts of headings 71.07, 71.09 and 71.11 ...	Doc. 40.636 (HSC/18 Add.)
22. Classification of "Cosmetic kit" and "Choconova for melting and moulding chocolate" .....	Doc. 40.915
23. Possible deletion of Classification Opinion 4811.40/1 .....	Doc. 40.916
24. Classification of delivery vans .....	Doc. 40.917
25. Classification of "Rozmrazovac—80° C" .....	Docs. 40.922 40.932
26. Classification of "automatic finishing line for top coat, base coat and staining for furniture manufacture" .....	Doc. 40.928
27. Classification of computer data and video projectors .....	Doc. 40.933
28. Classification of RG 7400 Host Security Module .....	Doc. 40.937
29. Classification of paper-backed printed aluminium foil labels .....	Doc. 40.936
Additional list	
1. Classification of a type of cooker used for domestic purposes .....	Doc. 40.891
2. Classification of "Genelavia mixt" .....	Doc. 41.108

## IX

*OTHER BUSINESS*

List of questions which might be examined at a future session .....	Doc. 40.872
---	-------------

X

*DATES OF THE NEXT SESSION*

SCIENTIFIC SUB-COMMITTEE

*Working Group*

Monday, June 2, 1997  
Wednesday, June 4, 1997

HS REVIEW SUB-COMMITTEE

*16th Session*

Monday, September 1, 1997  
Friday, September 5, 1997

HARMONIZED SYSTEM COMMITTEE

*Working Party*

Wednesday, November 5, 1997  
Friday, November 7, 1997

*20th Session*

Monday, November 10, 1997  
Friday, November 21, 1997

---

PROPOSED COLLECTION; COMMENT REQUEST

CERTIFICATE OF REGISTRATION

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Certificate of Registration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before May 6, 1997, to be assured of consideration.

**ADDRESS:** Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927-1426.

## SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

*Title:* Certificate of Registration

*OMB Number:* 1515-0014

*Form Number:* Customs Forms 4455 and 4457

*Abstract:* The Certificate of Registration is used to expedite free entry or entry at a reduced rate on foreign made personal articles which are taken abroad. These articles are dutiable each time they are brought into the United States unless there is acceptable proof of prior possession.

*Current Actions:* There are no changes to the information collection. This submission is being submitted to extend the expiration date.

*Type of Review:* Extension (without change)

*Affected Public:* Individuals, travelers.

*Estimated Number of Respondents:* 200,000

*Estimated Time Per Respondent:* 3 minutes

*Estimated Total Annual Burden Hours:* 10,000

*Estimated Total Annualized Cost on the Public:* N/A

Dated: March 10, 1997.

J. EDGAR NICHOLS,  
*Information Services Group.*

[Published in the Federal Register, March 18, 1997 (62 FR 12884)]

## PROPOSED COLLECTION; COMMENT REQUEST

DECLARATION OF FREE ENTRY OF RETURNED AMERICAN PRODUCTS  
(CUSTOMS FORM 3311)

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Declaration of Free entry of Returned American Products. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before May 6, 1997, to be assured of consideration.

**ADDRESS:** Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927-1426.

**SUPPLEMENTARY INFORMATION:**

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

*Title:* Declaration of Free entry of Returned American Products

*OMB Number:* 1515-0043

*Form Number:* Customs Form 3311

*Abstract:* This collection of information is used as a supporting documents which substantiates the claim for duty free status for returning American products.

*Current Actions:* There are no changes to the information collection. This submission is being submitted to extend the expiration date.

*Type of Review:* Extension (without change)

*Affected Public:* Businesses, Individuals,

*Estimated Number of Respondents:* 12,000

*Estimated Time Per Respondent:* 6 minutes

*Estimated Total Annual Burden Hours:* 51,000

*Estimated Total Annualized Cost on the Public:* \$198,000

Dated: March 10, 1997.

J. EDGAR NICHOLS,  
*Information Services Group.*

[Published in the Federal Register, March 18, 1997 (62 FR 12885)]

---

## PROPOSED COLLECTION; COMMENT REQUEST

### IMPORTERS ID INPUT RECORD

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Importers ID Input Record. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before May 6, 1997, to be assured of consideration.

**ADDRESS:** Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927-1426.

### SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the



functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

*Title:* Importers ID Input Record

*OMB Number:* 1515-0191

*Form Number:* Customs Form 5106

*Abstract:* This document is filed with the first formal entry which is submitted or the first request for services that will result in the issuance of a bill or a refund check upon adjustment of a cash collection.

*Current Actions:* There are no changes to the information collection. This submission is being submitted to extend the expiration date.

*Type of Review:* Extension (without change)

*Affected Public:* Businesses/Institutions

*Estimated Number of Respondents:* 500

*Estimated Time Per Respondent:* 6 minutes

*Estimated Total Annual Burden Hours:* 100

*Estimated Total Annualized Cost on the Public:* N/A

Dated: March 12, 1997.

V CAROL BARR,

*Printing and Records Services Group.*

[Published in the Federal Register, March 18, 1997 (62 FR 12885)]

## PROPOSED COLLECTION; COMMENT REQUEST

## CREW MEMBERS DECLARATION

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Crew Members Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before May 6, 1997, to be assured of consideration.

**ADDRESS:** Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927-1426.

**SUPPLEMENTARY INFORMATION:**

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

*Title:* Crew Members Declaration

*OMB Number:* 1515-0063

*Form Number:* Customs Form 5129

*Abstract:* This document is used to accept and record importations of merchandise by crew members, and to enforce agricultural quarantines, the currency reporting laws, and the revenue collection laws.

*Current Actions:* There are no changes to the information collection. This submission is being submitted to extend the expiration date.

*Type of Review: Extension (without change)*  
*Affected Public: Individuals*  
*Estimated Number of Respondents: 5,968,351*  
*Estimated Time Per Respondent: 3 minutes*  
*Estimated Total Annual Burden Hours: 298,418*  
*Estimated Total Annualized Cost on the Public: N/A*

Dated: March 12, 1997.

V. CAROL BARR,  
*Printing and Records Services Group.*

[Published in the Federal Register, March 18, 1997 (62 FR 12886)]

---

## PROPOSED COLLECTION; COMMENT REQUEST

### HARBOR MAINTENANCE FEE

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Harbor Maintenance Fee. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before May 6, 1997, to be assured of consideration.

**ADDRESS:** Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927-1426.

### SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden

of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

*Title:* Harbor Maintenance Fee

*OMB Number:* 1515-0158

*Form Number:* Customs Forms 349 and 350

*Abstract:* This collection of information will be used to verify that the Harbor Maintenance Fee paid is accurate and current for each individual, importer, exporter, shipper, or cruise line.

*Current Actions:* There are no changes to the information collection. This submission is being submitted to extend the expiration date.

*Type of Review:* Extension (without change)

*Affected Public:* Businesses, Institutions

*Estimated Number of Respondents:* 18,095

*Estimated Time Per Respondent:* 26 minutes

*Estimated Total Annual Burden Hours:* 32,245

*Estimated Total Annualized Cost on the Public:* N/A

Dated: March 11, 1997.

J. EDGAR NICHOLS,  
*Information Services Group.*

[Published in the Federal Register, March 18, 1997 (62 FR 12887)]

---

## PROPOSED COLLECTION; COMMENT REQUEST

### FREE ADMITTANCE UNDER CONDITIONS OF EMERGENCY

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Free Admittance Under Conditions of Emergency. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before May 6, 1997, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927-1426.

#### SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

*Title:* Free Admittance Under Conditions of Emergency

*OMB Number:* 1515-0130

*Form Number:* N/A

*Abstract:* This collection of information will be used in the event of emergency or catastrophic event to monitor goods temporarily admitted for the purpose of rescue or relief.

*Current Actions:* There are no changes to the information collection. This submission is being submitted to extend the expiration date.

*Type of Review:* Extension (without change)

*Affected Public:* Nonprofit Assistance Organizations

*Estimated Number of Respondents:* 1

*Estimated Time Per Respondent:* 1 minutes

*Estimated Total Annual Burden Hours:* 1

*Estimated Total Annualized Cost on the Public:* N/A

Dated: March 11, 1997.

J. EDGAR NICHOLS,  
Information Services Group.

## PROPOSED COLLECTION; COMMENT REQUEST

## ELECTRONIC ENTRY FILING

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Electronic Entry Filing. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before May 6, 1997, to be assured of consideration.

**ADDRESS:** Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927-1426.

**SUPPLEMENTARY INFORMATION:**

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

*Title:* Electronic Entry Filing

*OMB Number:* 1515-0174

*Form Number:* N/A

*Abstract:* The Electronic Entry Filing Regulations define the requirements for qualified Brokers, Importers, and Service Bureaus to file electronically through the Automated Broker Interface (ABI) entry and entry summary data.

*Current Actions:* There are no changes to the information collection. This submission is being submitted to extend the expiration date.

*Type of Review:* Extension (without change)

*Affected Public:* Businesses, Institutions

*Estimated Number of Respondents:* 14 million

*Estimated Time Per Respondent:* 1 second

*Estimated Total Annual Burden Hours:* 10,000

*Estimated Total Annualized Cost on the Public:* N/A

Dated: March 11, 1997.

J. EDGAR NICHOLS,  
*Information Services Group.*

[Published in the Federal Register, March 18, 1997 (62 FR 12888)]

---

## PROPOSED COLLECTION; COMMENT REQUEST

FOREIGN ASSEMBLER'S DECLARATION (WITH ENDORSEMENT BY IMPORTER)

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Foreign Assembler's Declaration (with Endorsement by Importer). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before May 6, 1997, to be assured of consideration.

**ADDRESS:** Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927-1426.

### SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the

collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

*Title:* Foreign Assembler's Declaration (with Endorsement by Importer)

*OMB Number:* 1515-0088

*Form Number:* N/A

*Abstract:* The Foreign Assembler's Declaration with Importer's Endorsement is used by Customs to substantiate a claim for duty free treatment of U.S. fabricated components sent abroad for assembly and subsequently returned to the U.S.

*Current Actions:* There are no changes to the information collection. This submission is being submitted to extend the expiration date.

*Type of Review:* Extension (without change)

*Affected Public:* Businesses, Individuals

*Estimated Number of Respondents:* 2,730

*Estimated Time Per Respondent:* 50 minutes

*Estimated Total Annual Burden Hours:* 302,402

*Estimated Total Annualized Cost on the Public:* N/A

Dated: March 11, 1997.

J. EDGAR NICHOLS,  
*Information Services Group.*

[Published in the Federal Register, March 18, 1997 (62 FR 12886)]



## PROPOSED COLLECTION; COMMENT REQUEST

## PROTEST

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Protest. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before May 6, 1997, to be assured of consideration.

**ADDRESS:** Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927-1426.

**SUPPLEMENTARY INFORMATION:**

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

*Title:* Protest

*OMB Number:* 1515-0056

*Form Number:* Customs Form 19

*Abstract:* This collection is used by an importer, filer, or any party at interest to petition the Customs Service, or Protest, any action or charge, made by the port director on or against any; imported merchandise, merchandise excluded from entry, or merchandise entered into or withdrawn from a Customs bonded warehouse.

*Current Actions:* There are no changes to the information collection. This submission is being submitted to extend the expiration date.

*Type of Review:* Extension (without change)

*Affected Public:* Businesses, Individuals, Institutions

*Estimated Number of Respondents:* 3,750

*Estimated Time Per Respondent:* 30 minutes

*Estimated Total Annual Burden Hours:* 41,250

*Estimated Total Annualized Cost on the Public:* N/A

Dated: March 11, 1997.

J. EDGAR NICHOLS,  
*Information Services Group.*

[Published in the Federal Register, March 18, 1997 (62 FR 12885)]

DEPARTMENT OF THE TREASURY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS,  
*Washington, DC, March 18, 1997.*

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P SEIDEL,  
*Assistant Commissioner,  
Office of Regulations and Rulings.*

---

PROPOSED REVOCATION OF CUSTOMS RULING LETTERS  
RELATING TO TARIFF CLASSIFICATION OF BRIDGE  
RECTIFIER DIODES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letters.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke three rulings pertaining to the tariff classification of bridge rectifier diodes ("BRDs"). Customs invites comments on the correctness of the proposed revocations.

DATE: Comments must be received on or before May 2, 1997.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Tariff Classification Appeals 1301 Constitution Avenue, NW, (Franklin Court), Washington, D.C. 20229. Comments submitted may be inspected at the Tariff Classification Appeals Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, NW, Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Robert Altneu, Attorney-Advisor, Tariff Classification Appeals Division, (202) 482-7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Moderniza-

tion) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke three rulings pertaining to the tariff classification of bridge rectifier diodes ("BRDs"). Customs invites comments on the correctness of the proposed revocations.

In HQ 085540, issued on December 18, 1989, Customs ruled that BRDs were classifiable as static converters under subheading 8504.40.00, Harmonized Tariff Schedule of the United States (HTSUS). Customs rejected the ruling requester's contention that the BRDs met the terms of diodes for heading 8541, HTSUS, as defined by Legal Note 5 to chapter 85, because the BRDs consisted of more than one diode used to transfer energy from alternating current to direct current. HQ 085540 is set forth in "Attachment A" to this document. This ruling was affirmed in HQ 086223, dated April 11, 1990, which is set forth as "Attachment B" to this document. The Area Director of Customs, New York Seaport, issued NY 884870 on May 6, 1993, also classifying BRDs under subheading 8504.40.00, HTSUS. The NY ruling is set forth as "Attachment C" to this document.

In light of a recent Court of International Trade (CIT) decision, *ABB Power Transmission v. United States*, 896 F. Supp. 1279, CIT Slip Op. 95-141 (August 4, 1995), concerning thyristor modules and the scope of headings 8504 and 8541, Customs has re-examined Legal Notes 2 and 5 to chapter 85 and its classification of BRDs. We now find that based upon the legal notes and the rationale of the CIT decision, that BRDs are properly classifiable under heading 8541, as diodes.

Customs intends to revoke HQ 085540, HQ 086223, and NY 884870 to reflect the proper classification of BRDs as diodes in subheading 8541.10.00, HTSUS. Before taking this action, we will give consideration to any written comments timely received. Proposed Headquarters ruling 958726 revoking HQ 085540 and HQ 086223, is set forth as "Attachment D" to this document. Proposed Headquarters ruling 960323 revoking NY 884870 is set forth as "Attachment E" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: March 17, 1997.

MARVIN M. AMERNICK,  
(for John Durant, Director,  
Tariff Classification Appeals Division.)

[Attachments]

## [ATTACHMENT A]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,

Washington, DC, December 18, 1989.

CLA-2 CO:R:C:G 085540 AJS

Category: Classification

Tariff No. 8504.40.00; 8541.10.00

MR. ROBERT BLANC  
ASSOCIATE GENERAL COUNSEL  
GENERAL INSTRUMENTS CORPORATION  
125 Chubb Avenue  
P.O. Box 617  
Lyndhurst, NJ 07071-0617

Re: Bridge rectifier diodes.

DEAR MR. BLANC:

Your letter of July 28, 1989, requesting a tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), has been referred to this office for reply.

*Facts:*

The article in question is the series KBPC6 Bridge Rectifier Diode (BRD). The BRD consists of four discrete rectifier diodes or cells connected together and mounted in a housing to form a full wave rectifier. Each of the four diodes is a two terminal device with a single p-n junction which allows current to pass in one direction. BRDs are used in a wide variety of consumer and industrial products, such as power supplies, personal computers and associated equipment (i.e., printers and monitors).

*Issue:*

Whether the article in question is classifiable within subheading 8541.10.00, HTSUSA, which provides for "[d]iodes, other than photosensitive or light emitting diodes,"; or within subheading 8504.40.00, HTSUSA, which provides for static converters.

*Law and Analysis:*

Classification of merchandise under the HTSUSA is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification is determined first in accordance with the terms of the headings of the tariff and any relative section or chapter notes.

Heading 8541, HTSUSA, provides for diodes. Diodes are described as semiconductor devices, the operation of which depends on variations in resistivity on the application of an electric field. Chapter 85, Note 5(a). Explanatory Note 85.41(A)(I) states that "[d]iodes which are two terminal devices with a single p-n junction; they allow current to pass in one direction (forward) but offer a very high resistance in the other (reverse). They are used for detection, rectification, switching, etc. The main types of diodes are signal diodes, power rectifier diodes, voltage regulator diodes, voltage reference diodes."

The diodes contained in the BRD are each two terminal devices which possess a single p-n junction that allows current to pass in one direction. However, the BRD itself is not a two terminal device with a single p-n junction which allows current to pass in one direction. Instead, the BRD is composed of four of these two terminal devices which pass current in two directions. Therefore, the BRD does not satisfy the description of a diode within the terms of heading 8541.

Heading 8504, HTSUSA, provides for static converters. EN 85.04(II) states that "[t]he apparatus of this group (static converters) are used to convert electrical energy in order to adapt it for further use. They incorporate converting elements (e.g., valves) of different types. They may also incorporate various auxiliary devices (e.g., transformers, induction coils, resistors, command regulators, etc.). Their operation is based on the principle that the converting elements act alternately as conductors and non-conductors." Furthermore, this group includes "rectifiers by which alternating current (single or polyphase) is converted to direct current, generally accompanied by a voltage change." Your letter states that each of the BRDs contain four rectifier diodes. In addition, you state that all of these BRD devices are used for the same function and that is to transfer energy from alternating current to direct current. Thus, the BRDs perform the specific function of rectifiers and are therefore classifiable as a type of static converter within heading 8504.

*Holding:*

The article in question is classifiable within subheading 8504.40.00, HTSUSA, which provides for static converters dutiable at the rate of 3.0 percent *ad valorem*.

JOHN DURANT,

*Director,  
Commercial Rulings Division.*

---

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,

U.S. CUSTOMS SERVICE,

Washington, DC, April 11, 1990.

CLA-2 C0:R:C:G 086223

Category: Classification

Tariff No. 8504.40.00

MR. ROBERT BLANC, ESQ.  
ASSOCIATE GENERAL COUNSEL  
DIRECTOR OF CUSTOMS  
GENERAL INSTRUMENT CORPORATION  
125 Chubb Ave., P.O. Box 617  
Lyndhurst, NJ 07071-0617

Re: Bridge rectifier diodes.

DEAR MR. BLANC:

This responds to your correspondence dated December 22, 1989 in which you requested reconsideration of HQ Ruling 085540 (December 18, 1989). HQ Ruling 085540 determined the classification of certain bridge rectifier diodes. Our ruling follows.

*Facts:*

The merchandise consists of the General Instrument series KBPC6 Bridge Rectifier Diodes (BRD's). BRD's are comprised of four discrete rectifier diodes connected into a bridge configuration, some with mountings, housings and integral cooling attachments. The articles have four terminals and an asymmetrical voltage-current characteristic used for the purpose of rectification. All the series KBPC6 BRD's are used for the function of converting alternating current to direct current.

*Issue:*

Are the BRD's classified as Heading 8541 "similar semiconductor devices", or as Heading 8504 static converters?

*Law and Analysis:*

HQ Ruling 085540 (December 18, 1989) determined that BRD's were classified as static converters in Heading 8504. The importer's request for reconsideration suggests that if the BRD's do not meet the Heading 8541 description for "diodes", then they should be classified in Heading 8541 as "similar semiconductor devices".

The BRD's under consideration are not classifiable as Heading 8541 "similar semiconductor devices". The Explanatory Notes to Heading 8541 provide that "similar semiconductor devices" include thyristors, triacs, diacs, varactors, field effect devices and Gunn effect devices. This list is illustrative and the "similar semiconductor devices" listed appear to be discrete devices and are not assemblies of devices designed to perform a principal function which is specifically described by another heading of the HTSUSA. A BRD's individual diodes, if classified separately, might meet the Chapter 85 Note 5(A) definition for diodes and be classified in Heading 8541; however, BRD assemblies are articles designed to perform a principal function of rectifying alternating current to direct current, a function specifically described by another Heading of the HTSUSA, and do not fall in Heading 8541.

The BRD's under consideration are described by Heading 8504 as static converters. The Explanatory Notes to Heading 8504, p. 1338, provide that static converters are apparatus

used to Convert electrical energy in order to adapt it for further use. An assembly of diodes in a bridge configuration with four terminals for the specific use of rectification is an apparatus described as an electrical static converter. The BRD's are less sophisticated than other converters described in the Explanatory Notes to Heading 8504 in that they do not incorporate transformers, induction coils, etc.; nevertheless, they are described by Heading 8504 and fall in subheading 8504.40.00, HTSUSA.

*Holding:*

HQ Ruling 085540 (December 18, 1989) correctly determined that the General Instrument series KBPC6 Bridge Rectifier Diodes are classified in subheading 8504.40.00 and is affirmed.

ARTHUR P. SCHIFFLIN,  
(for Jerry Laderberg, Acting Director,  
Commercial Rulings Division.)

---

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
New York, NY, May 6, 1993.  
CLA-2-85:S:N:109 884870  
Category: Classification  
Tariff No: 8504.40.00

MR. FRANK DAILEY  
AMERICAN OVERSEAS AIR FREIGHT, INC.  
11034 South La Cienga Blvd.  
Inglewood, CA 90304-1198

Re: The tariff classification of bridge diodes from Taiwan.

DEAR MR. DAILEY:

In your letter dated March 25, 1993, on behalf of Microsemiconductors Corp. of Chatsworth California, you requested a tariff classification ruling.

The merchandise is described in the submitted literature as bridge diodes. These appear to be standard bridge rectifiers consisting of four (4) diodes connected in a series.

The applicable subheading for the bridge diodes will be 8504.40.00, Harmonized Tariff Schedule of the United States (HTS), which provides for "[rectifiers and rectifying apparatus]." The rate of duty will be 3 percent *ad valorem*.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,  
Area Director,  
New York Seaport.

## [ATTACHMENT D]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
Washington, DC.

CLA-2 RR:TC:MM 958726 RFA  
Category: Classification  
Tariff No. 8541.10.00

MR. LOUIS SCHNEIDER  
WASSERMAN, SCHNEIDER & BABB  
90 John Street  
New York, NY 10038

Re: Bridge rectifier diodes; thyristor modules; electrical static converters; Legal Notes 2 and 5 to Chapter 85; Headings 8504 and 8541; *ABB Power Transmission v. United States*, Slip Op. 95-141; HQ 086223 and HQ 085540, revoked.

DEAR MR. SCHNEIDER:

This is in response to your letter dated November 1, 1995, requesting reconsideration of HQ 086223, dated April 11, 1990, which affirmed HQ 085540, dated February 18, 1989, on behalf of General Instrument Corporation. In HQ 086223 and HQ 085540, Customs determined the tariff classification of bridge rectifier diodes under the Harmonized Tariff Schedule of the United States (HTSUS).

*Facts:*

The merchandise consists of the General Instrument series KBPC6 Bridge Rectifier Diodes (BRD's). The BRD's are comprised of four discrete rectifier diodes or cells connected together into a bridge configuration, some with mountings, housings and integral cooling attachments. Each of the four diodes is a two terminal device with a single p-n junction which allows current to pass in one direction.

The articles have four terminals and an asymmetrical voltage-current characteristic used for the purpose of rectification. All the series KBPC6 BRD's are used for the function of converting alternating current to direct current. The BRDs are used in a wide variety of consumer and industrial products, such as power supplies, personal computers and associated equipment (i.e., printers and monitors).

*Issue:*

Are the BRD's classified as diodes under heading 8541, HTSUS, or as static converters under heading 8504, HTSUS?

*Law and Analysis:*

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes.

Legal Note 2 to chapter 85, HTSUS, states that: "[h]eadings 8501 to 8504 do not apply to goods described in heading 8511, 8512, 8540, 8541 or 8542." The HTSUS clearly indicates that merchandise classifiable under heading 8541 takes precedence over heading 8504 as evidenced by Legal Note 5 to chapter 85, which provides in pertinent part:

For the purposes of headings 8541 and 8542:

(a) "Diodes, transistors and similar semiconductor devices" are semiconductor devices the operation of which depends on variations in resistivity on the application of an electric field;

For the classification of the articles defined in this note, headings 8541 and 8542 shall take precedence over any other heading in the tariff schedule which might cover them by reference to, in particular, their function.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 FR 35127, 35128 (August 23, 1989). EN 85.41 states in pertinent part: "[d]iodes which are two-terminal devices with a single p-n junction; they allow current to pass in one direction



(forward) but offer a very high resistance in the other (reverse). They are used for detection, rectification, switching, etc. The main types of diodes are signal diodes, power rectifier diodes, voltage regulator diodes, voltage reference diodes."

In HQ 085540, dated December 18, 1989, Customs determined that the BRDs did not satisfy the description of diodes within the terms of heading 8541, HTSUS, because the BRD is composed of four of these two terminal devices which pass current in two directions. Customs further found that because the BRD are used to transfer energy from alternating current to direct current, it met the terms of heading 8504, HTSUS, which provides for static converters. EN 85.04, which defines the scope of static converters of heading 8504, HTSUS, states in pertinent part:

## (II) ELECTRICAL STATIC CONVERTERS

The apparatus of this group are used to convert electrical energy in order to adapt it for further use. They incorporate converting elements (e.g., valves) of different types. They may also incorporate various auxiliary devices (e.g., transformers, induction coils, resistors, command regulators, etc.). Their operation is based on the principle that the converting elements act alternately as conductors and non-conductors.

The fact that these apparatus often incorporate auxiliary circuits to regulate the voltage of the emerging current does not affect their classification in this group, nor does the fact that they are sometimes referred to as voltage or current regulators.

This group includes:

(A) Rectifiers by which alternating current (single or polyphase) is converted to direct current, generally accompanied by a voltage change.

Electrical static converters may be divided into the following principal categories according to the type of converting element with which they are equipped:

(1) Semiconductor converters based on the one-way conductivity between certain crystals. Such converters consist of a semiconductor as the converting element and various other devices (e.g., coolers, tape conductors, drives, regulators, control circuits).

These include:

(a) Monocrystalline semiconductor rectifiers using, as a converting element, a device containing silicon or germanium crystals (diode, thyristor, transistor).

(b) Polycrystalline semiconductor rectifiers using a selenium disc.

In a request to reconsider HQ 085540, Customs recognized that a BRD's individual diodes, if classified separately from each other, may meet the Legal Note 5(A) to chapter 85 definition for diodes and be classified under heading 8541, HTSUS. However, the merchandise in its condition as imported, consisted of assemblies which were designed to perform a principal function of rectifying alternating current to direct current, a function specifically described by another heading of the HTSUS. Therefore, Customs concluded that the BRDs met the terms of heading 8504, HTSUS, as static converters, and affirmed HQ 085540. (See HQ 086223, dated April 11, 1990.)

You claim that the proper classification of the BRDs should be under heading 8541, HTSUS, based upon a decision by the Court of International Trade (CIT). In *ABB Power Transmission v United States*, 896 F.Supp. 1279, CIT Slip Op. 95-141 (August 4, 1995), the CIT determined that a thyristor module consisting of six thyristors connected in a series, heatsinks, voltage divider circuits and electronic "firing" circuitry mounted onto a frame, was classifiable under heading 8541, HTSUS. Even though the thyristor module contained significant components in addition to thyristors, the court found that the function the module performs falls within the definition of a thyristor as a similar semiconductor device.

Based upon Legal Notes 2 and 5 to chapter 85, HTSUS, and the rationale in *ABB Power Transmission*, we find that the subject BRDs, which are made up of individual diodes, are classifiable under heading 8541, HTSUS, as other diodes. Because of the decision in *ABB Power Transmission* we find that HQ 086223 and HQ 085540 must be revoked.

### Holding:

The BRDs are classifiable under subheading 8541.10.00, HTSUS, which provides for: "[d]iodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into

panels \* \* \*: [d]iodes, other than photosensitive or light-emitting diodes \* \* \*." The general, column one rate of duty is free.

*Effect on Other Rulings:*

HQ 086223, dated April 11, 1990, and HQ 085540, dated December 18, 1989, are revoked.

JOHN DURANT,

Director,

Tariff Classification Appeals Division.

---

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY.

U.S. CUSTOMS SERVICE,

Washington, DC.

CLA-2 RR:TC:MM 960323 RFA

Category: Classification

Tariff No. 8541.10.00

MR. FRANK DAILEY

AMERICAN OVERSEAS AIR FREIGHT, INC.

11034 South La Cienga Blvd.

Inglewood, CA 90304-1998

Re: Bridge rectifier diodes; thyristor modules; electrical static converters; Legal Notes 2 and 5 to Chapter 85; Headings 8504 and 8541; *ABB Power Transmission v. United States*, Slip Op. 95-141; NY 884870, revoked.

DEAR MR. DAILEY:

This is in reference to NY 884870 issued to you on May 6, 1993, by the Area Director of Customs, New York Seaport, on behalf of Microsemiconductors Corp., regarding the tariff classification of bridge rectifier diodes under the Harmonized Tariff Schedule of the United States (HTSUS). In the course of ruling on similar merchandise, we have determined that NY 884870 is incorrect.

*Facts:*

The merchandise consists of bridge diodes or sometimes referred to as Bridge Rectifier Diodes (BRD's). The BRD's are comprised of four discrete rectifier diodes or cells connected together into a bridge configuration, some with mountings, housings and integral cooling attachments. Each of the four diodes is a two terminal device with a single p-n junction which allows current to pass in one direction.

The articles have four terminals and an asymmetrical voltage-current characteristic used for the purpose of rectification. All the series KBPC6 BRD's are used for the function of converting alternating current to direct current. The BRDs are used in a wide variety of consumer and industrial products, such as power supplies, personal computers and associated equipment (i.e., printers and monitors).

*Issue:*

Are the BRD's classified as diodes under heading 8541, HTSUS, or as static converters under heading 8504, HTSUS?

*Law and Analysis:*

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes.

Legal Note 2 to chapter 85, HTSUS, states that: "[h]eading 8501 to 8504 do not apply to goods described in heading 8511, 8512, 8540, 8541 or 8542." The HTSUS clearly indicates that merchandise classifiable under heading 8541 takes precedence over heading 8504 as evidenced by Legal Note 5 to chapter 85, which provides in pertinent part:

For the purposes of headings 8541 and 8542:

(a) "Diodes, transistors and similar semiconductor devices" are semiconductor devices the operation of which depends on variations in resistivity on the application of an electric field;

For the classification of the articles defined in this note, headings 8541 and 8542 shall take precedence over any other heading in the tariff schedule which might cover them by reference to, in particular, their function.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 FR 35127, 35128 (August 23, 1989). EN 85.41 states in pertinent part: "[d]iodes which are two-terminal devices with a single p-n junction; they allow current to pass in one direction (forward) but offer a very high resistance in the other (reverse). They are used for detection, rectification, switching, etc. The main types of diodes are signal diodes, power rectifier diodes, voltage regulator diodes, voltage reference diodes."

In HQ 085540, dated December 18, 1989, Customs determined that the BRDs did not satisfy the description of diodes within the terms of heading 8541, HTSUS, because the BRD is composed of four of these two terminal devices which pass current in two directions. Customs further found that because the BRD are used to transfer energy from alternating current to direct current, it met the terms of heading 8504, HTSUS, which provides for static converters. EN 85.04, which defines the scope of static converters of heading 8504, HTSUS, states in pertinent part:

#### (II) ELECTRICAL STATIC CONVERTERS

The apparatus of this group are used to convert electrical energy in order to adapt it for further use. They incorporate converting elements (e.g., valves) of different types. They may also incorporate various auxiliary devices (e.g., transformers, induction coils, resistors, command regulators, etc.). Their operation is based on the principle that the converting elements act alternately as conductors and non-conductors.

The fact that these apparatus often incorporate auxiliary circuits to regulate the voltage of the emerging current does not affect their classification in this group, nor does the fact that they are sometimes referred to as voltage or current regulators.

This group includes:

(A) Rectifiers by which alternating current (single or polyphase) is converted to direct current, generally accompanied by a voltage change.

Electrical static converters may be divided into the following principal categories according to the type of converting element with which they are equipped:

(1) Semiconductor converters based on the one-way conductivity between certain crystals. Such converters consist of a semiconductor as the converting element and various other devices (e.g., coolers, tape conductors, drives, regulators, control circuits)

These include:

(a) Monocrystalline semiconductor rectifiers using, as a converting element, a device containing silicon or germanium crystals (diode, thyristor, transistor).

(b) Polycrystalline semiconductor rectifiers using a selenium disc.

In a request to reconsider HQ 085540, Customs recognized that a BRD's individual diodes, if classified separately from each other, may meet the Legal Note 5(A) to chapter 85 definition for diodes and be classified under heading 8541, HTSUS. However, the merchandise in its condition as imported, consisted of assemblies which were designed to perform a principal function of rectifying alternating current to direct current, a function specifically described by another heading of the HTSUS. Therefore, Customs concluded that the BRDs met the terms of heading 8504, HTSUS, as static converters, and affirmed HQ 085540. (See HQ 086223, dated April 11, 1990.) Based upon these rulings, the Area Director of Customs, New York Seaport, issued NY 884870 on May 6, 1993, classifying your client's BRDs under subheading 8504.40.00, HTSUS.

It has come to our attention that the classification of the BRDs could fall within the terms of heading 8541, HTSUS, based upon a recent decision by the Court of International Trade (CIT) in *ABB Power Transmission v. United States*, 896 F. Supp. 1279, CIT Slip Op.

95-141 (August 4, 1995), the CIT determined that a thyristor module consisting of six thyristors connected in a series, heatsinks, voltage divider circuits and electronic "firing" circuitry mounted onto a frame, was classifiable under heading 8541, HTSUS. Even though the thyristor module contained significant components in addition to thyristors, the court found that the function the module performs falls within the definition of a thyristor as a similar semiconductor device.

Based upon Legal Notes 2 and 5 to chapter 85, HTSUS, and the rationale in *ABB Power Transmission*, we find that the subject BRDs, which are made up of individual diodes, are classifiable under heading 8541, HTSUS, as other diodes. Because of the decision in *ABB Power Transmission* we find that HQ 086223, HQ 085540, and NY 884870 must be revoked. HQ 086223, dated April 11, 1990, and HQ 085540, dated December 18, 1989, shall be revoked by proposed HQ ruling 958726.

*Holding:*

The BRDs are classifiable under subheading 8541.10.00, HTSUS, which provides for: "[d]iodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels \* \* \*; [d]iodes, other than photosensitive or light-emitting diodes \* \* \*." The general, column one rate of duty is free.

*Effect on Other Rulings:*

NY 884870 dated May 6, 1993, is revoked.

JOHN DURANT,  
Director,

Tariff Classification Appeals Division.

---

## MODIFICATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF "SPIN POPS"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling pertaining to the tariff classification of "Spin Pops". The "Spin Pop" is an article consisting of a toy-like figure inside of which is a battery-operated motor. A lollypop inserted in the top of the figure will spin when the user presses a button to start the motor. Notice of the proposed modification was published on February 5, 1997, in the Customs Bulletin. One comment was received in response to that publication.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or June 2, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Cascardo, Food and Chemicals Classification Branch, Office of Regulations and Rulings (202) 482-7061.

## SUPPLEMENTARY INFORMATION:

## BACKGROUND

On February 5, 1997, Customs published in the Customs Bulletin, Volume 31, No. 6, a notice of proposal to modify New York Ruling Letter (NYRL) A82245, dated April 25, 1996, which held that Spin Pop items were classifiable as separate components. The lollipop component was classifiable in subheading 1704.90.3505, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), the provision for other sugar confectionery, dutiable at 6.5 percent *ad valorem*. As an item of US origin, the lollipop was considered for preferential duty treatment under heading 9802.00.8065, HTSUSA. The handle component was classified in subheading 8501.10.4060, HTSUSA, the provision for "Electric motors \* \* \*: Motors of an output not exceeding 37.5 W: of under 18.65 W: Other, DC: Other," dutiable at 5.7 percent *ad valorem*.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying NYRL A82245 to reflect the proper classification of "Spin Pops" as composite goods in either subheading 8501.10.4060 or 9503.80.0010. Classification is fact specific. Headquarters Ruling Letter 959601, revoking NYRL A82245, is set forth in the attachment to this document.

Publication of rulings or decisions pursuant to 19 U.S.C. 1625 does not constitute a change in practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: March 13, 1997.

JOHN DURANT,  
*Director,*  
*Tariff Classification Appeals Division.*

[Attachment]

## [ATTACHMENT]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
Washington, DC, March 13, 1997.  
CLA-2 RR:TC:FC 959601 RC  
Category Classification  
Tariff No. 8501.10.4060 and 9503.80.0010

JOEL K. SIMON, ESQ.  
SERKO & SIMON  
One World Trade Center  
New York, NY 10048

Re: Request for reconsideration New York Ruling Letter (NYRL) A82245; "Spin Pops"

DEAR MR. SIMON:

This is in response to your letter of August 2, 1996, on behalf of your client CAP Toys, Inc., requesting reconsideration of NYRL A82245, dated April 25, 1996, issued to your client, concerning the classification of various "Spin Pops." We have also taken into consideration the information you presented to Headquarters personnel on November 20, 1996.

*Facts:*

The "Spin Pop" articles consist of a handle containing a battery-powered motor (output of .75 to 1.50 watts ("W")) and a lollipop. When depressed, a button on the side of the handle activates the motor causing the lollipop to spin. The samples feature the head and torso of a given three-dimensional cartoon character. Each character's head has a small hole designed to accommodate a given lollipop stick. The four characters are as follows: "Batman" (Item 4500); White "Mighty Morphin Power" Ranger (Item 4505); "Dolly Lolly"—a ballerina (Item 4510); and "Taz"—the Tasmanian Devil (Item 4515). For the first two items, only the lollipop spins when the handle button is depressed. For the latter two items, the character itself, as well as the lollipop, spins when the handle button is depressed. The "Spin Pop" articles measure approximately six inches in height, one inch in width, and one inch in depth. On the bottom of the handle, a panel may be opened to remove and replace the "AA" size battery. The handles are made in China. The lollipops are made in the United States and exported for packaging with the other items in China.

In NYRL A82245, Customs classified the Spin Pops in subheading 8501.10.4060, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), the provision for other electric motors, of an output not exceeding 37.5 W of under 18.65 W, other, DC, other, dutiable at 5.7 percent *ad valorem*; the lollipops in subheading 1704.90.3505, HTSUSA, the provision for other sugar confectionery, dutiable at 6.5 percent *ad valorem*. As items of US origin, the lollipops were considered for preferential duty treatment under heading 9802.00.8065, HTSUSA.

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NYRL A82245 was published on February 5, 1997, in the Customs Bulletin, Volume 31, Number 6.

*Issue:*

Whether the "Spin Pops" are properly classifiable in heading 8501, HTSUS, as electric motors or in heading 9503, HTSUS, as toys with motors.

*Law and Analysis:*

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRIs.

The instant articles, composite goods consisting of different components, cannot be classified by reference to GRI 1 because the components are *prima facie* classifiable in different

headings. The lollipops are classifiable in heading 1704, HTSUSA, the provision for other sugar confectionery. The handles, depending on the design, are classifiable in Chapter 85 or 95, HTSUSA, the provision for other motors or toys with motors, respectively.

In pertinent part, GRI 2(b) states that:

[t]he classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

GRI 3(a) directs that the headings are regarded as equally specific when each of the separate headings refers to only part of the composite article. Therefore, to determine under which provision the article will be classified, we look to GRI 3(b), which states that: (m)ixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

Explanatory Note VIII to GRI 3(b) provides the following guidance concerning the essential character determination:

The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

Explanatory Note IX to GRI 3(b) states in pertinent part that:

For the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, **provided** these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.

Here, the different Spin Pop components, adapted one to the other, are mutually complementary. Together they form a whole which would not normally be offered for sale in separate parts. While the lollipops are normally sold separately, the lollipop spinners are never sold separately.

Next, to classify the Spin Pops, we must decide which component imparts the essential character. We note that when activated, the motors of the "White Ranger" and "Batman" items spin only the lollipops, not their three-dimensional cartoon characters. In essence, these "Spin Pops" are similar to those ruled upon in Headquarters Ruling Letter (HRL) 955233 (April 14, 1994), issued to you on behalf of your client, CAP Toys, Inc. There, the "Spin Pops" also consisted of handles designed to spin lollipops. However, those "Spin Pops," imported without lollipops, lacked the three-dimensional cartoon character motifs. Nevertheless, we find that the "White Ranger" and "Batman" cartoon characters are purely decorative, in no way tied to activation of the motors. Like the Spin Pops in HRL 955233, the motor component for the "White Ranger" and "Batman" items contributes most to the finished products, in terms of bulk, weight, and value. The motor imparts the essential character for these items. Consequently, the "White Ranger" and "Batman" items are classifiable in Chapter 85.

In contrast, we note that the "Dolly Lolly" and "Taz" cartoon characters spin when the motors are activated, along with the lollipops. This animation of the three-dimensional cartoon characters gives the items separate play value tied directly to activation of the motors. A child activates the motor to play with the moving characters, even without a lollipop. For the "Dolly Lolly" and "Taz" items, the nature of the animated cartoon characters, as motorized toys, contributes most to the finished products, in terms of bulk, weight, and value. The animated cartoon characters impart the essential character of the "Dolly Lolly" and "Taz" items. Consequently, the "Dolly Lolly" and "Taz" items are classifiable in Chapter 95.

#### *Holding:*

The "White Ranger" and "Batman" items are classifiable in subheading 8501.10.4060, HTSUSA, the provision for "Electric motors \* \* \*. Motors of an output not exceeding 37.5 W: of under 18.65 W: Other, DC: Other," dutiable at 5.7 percent *ad valorem*.

The "Dolly Lolly" and "Taz" items are classifiable in subheading 9503.80.0010, HTSUSA, as "Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other toys and models, incorporo-



rating a motor, and parts and accessories thereof, Toys (except models): Incorporating an electric motor." The applicable rate of duty is free.

NYRL A82245 is modified.

In accordance with 19 U.S.C. 1625, this ruling will become effective 60 days from its publication in the Customs Bulletin. Publication of rulings or decisions pursuant to 19 U.S.C. 1625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN DURANT

*Director,*

*Tariff Classification Appeals Division.*

---

### PROPOSED REVOCATION OF RULING LETTERS RELATING TO TARIFF CLASSIFICATION OF PLASTIC LOOSE LEAF PENCIL POUCHES AND BOXES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of fourteen tariff classification ruling letters.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke fourteen rulings pertaining to the tariff classification of plastic loose leaf pencil pouches and boxes. Comments are invited on the correctness of the proposed rulings.

DATE: Comments must be received on or before May 2, 1997.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Tariff Classification Appeals Division, 1301 Constitution Avenue, N.W. (Franklin Court), Washington D.C. 20229. Comments submitted may be inspected at the Tariff Classification Appeals Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington D.C.

FOR FURTHER INFORMATION CONTACT: Mary Beth McLoughlin, Food and Chemicals Classification Branch (202) 482-7062.

#### SUPPLEMENTARY INFORMATION:

##### BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke fourteen rulings pertaining to the tariff



classification of plastic loose leaf pencil pouches and boxes. Comments are invited on the correctness of the proposed rulings.

In New York Ruling Letters (NYRL) 847709, 858291, 863506, 863509, 877744, 884087, 886391 and 887467 and Headquarters Ruling Letters (HRL) 952017, 088323, 085526, 085224 and 084715 Customs determined that plastic pencil loose leaf pouches and boxes were classifiable under heading 3923, HTSUSA, which provides, in pertinent part, for articles for the conveyance or packing of goods, of plastic. NYRLs 847709, 863506, 863509, 877744, 884087, 886391, 887467 and 891812 and HRLs 952017, 088323, 085526, 085224 and 084715 are set forth as Attachments A through M to this document.

In HRLs 953177 dated April 7, 1993, 954072 dated September 2, 1993, 954816 dated December 7, 1993, 957894 and 957895 both dated December 14, 1995, 955660 dated September 27, 1994, 955047 dated October 6, 1994, and 958174 dated January 31, 1996, Customs indicated that subheading 3923.10 provides for cases and containers for bulk goods and *commercial goods, not personal articles*.

As the pencil pouches and boxes transport pens, pencils, erasers, etc. and are for personal use, they are not described by heading 3923, HTSUS. Customs intends to revoke NYRLs 847709, 858291, 863506, 863509, 877744, 884087, 886391 and 887467 and HRLs 952017, 088323, 085526, 085224 and 084715 to reflect the proper classification of the pencil pouches and boxes under subheading 3926.10, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies." Before taking this action, consideration will be given to any written comments timely received. Proposed HRLs revoking NYRLs 847709, 858291, 863506, 863509, 877744, 884087, 886391, 887467 and 891812 and HRLs 952017, 088323, 085526, 085224 and 084715 are set forth in "Attachments N-V" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: March 13, 1997.

JOHN DURANT,  
Director,  
*Tariff Classification Appeals Division.*

[Attachment]

## [ATTACHMENT A]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
New York, NY.  
CLA-2-39:S:N:N3D:221 847709  
Category: Classification  
Tariff No. 3923.10.0000

MR. D.F. MILLER  
J.W. HAMPTON, JR. & CO., INC.  
15 Park Row  
New York, NY 10038

Re: The tariff classification of a plastic pencil box from Korea.

DEAR MR. MILLER:

In your letter dated December 1, 1989, on behalf of F.W. Woolworth Co., you requested a tariff classification ruling.

The pencil box (article number 90000) is composed of injection molded plastic.

The applicable subheading for the pencil box will be 3923.10.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for articles for the conveyance or packing of goods, of plastics \* \* \* boxes, cases, crates and similar articles. The rate of duty will be 3 percent *ad valorem*. The rate of duty will remain the same in 1990.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,  
Area Director,  
New York Seaport.

## [ATTACHMENT B]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
New York, NY, December 20, 1990.  
CLA39:S:N:N3G:221 858291  
Category: Classification  
Tariff No. 3923.10.0000

MR. TERRY M. KANE  
ROCHELLE'S, INC.  
Sunset Ridge Business Park  
5841 Cedar Lake Road, Suite 202  
Minneapolis, MN 55416

Re: The tariff classification of plastic pencil boxes from Taiwan.

DEAR MR. KANE:

In your letter dated November 14, 1990, you requested a tariff classification ruling.

Three samples were submitted with your ruling. All are pencil boxes made of molded plastics material, with features including drawers and novelty compartments. Style 222 is in the shape of a robot. Styles 223 and 225 are in the form of rectangular boxes. Each box has a built-in pencil sharpener and magnifying lens. Two styles have built-in thermometers. Erasers may be included. The samples are being returned as you requested.

The applicable subheading for the pencil boxes will be 3923.10.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for articles for the conveyance or packing of goods, of plastics, boxes, cases, crates and similar articles. The rate of duty will be 3 percent *ad valorem*.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177.)

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,  
*Area Director,  
New York Seaport.*

---

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE  
*New York, NY, June 12, 1991*  
CLA-2-39:S:N:N3G:221 863506  
Category: Classification  
Tariff No. 3923.29.0000

MS. MONA WEBSTER  
TARGET STORES  
33 South Sixth Street  
PO. Box 1392  
Minneapolis, MN 55440-1392

Re: The tariff classification of a stationery set in a pencil case from Taiwan.

DEAR MS. WEBSTER:

In your letter dated May 14, 1991, you requested a tariff classification ruling.

The stationery set (Article No. 4759) consists of a plastic ruler, pencil, pencil sharpener, eraser and small note pad packaged in a pencil case composed of vinyl sheeting. The case has an interlocking ziploc-type closure and a series of stamped holes for placement onto the rings of a looseleaf binder.

The applicable subheading for the stationery set will be 3923.29.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for articles for the conveyance or packing of goods, of plastics; sacks and bags, other. The rate of duty will be 3 percent *ad valorem*.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,  
*Area Director,  
New York Seaport.*

## [ATTACHMENT D]

DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE,  
*New York, NY, June 12, 1991.*  
CLA-2-39:S:N:N3G:221 863509  
Category: Classification  
Tariff No. 3923.10.0000

MS. MONA WEBSTER  
TARGET STORES  
33 South Sixth Street  
P.O. Box 1392  
Minneapolis, MN 55440-1392

Re: The tariff classification of a stationery set in a pencil box from Taiwan.

DEAR MS. WEBSTER:

In your letter dated May 13, 1991, you requested a tariff classification ruling.

The stationery set (Article No. 4755) consists of a ballpoint pen, pencil, plastic ruler, eraser and a sharpener packaged in a pencil box composed of molded plastics.

The applicable subheading for the stationery set will be 3923.10.0000, Harmonized Tariff Schedule of the United States (HTS) which provides for article for the conveyance or packing of goods, of plastics; boxes, cases, crates and similar articles. The rate of duty will be 3 percent *ad valorem*.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F MAGUIRE,  
*Area Director,  
New York Seaport.*

## [ATTACHMENT E]

DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE,  
*New York, NY, September 16, 1992.*  
CLA39:S:N:N3D:221 877744  
Category: Classification  
Tariff No. 3923.10.0000

MR. FRED SHAPIRO  
FASCO (USA) LTD.  
2 Three Gables Road  
Morris Twp. NJ 07960

Re: The tariff classification of a molded plastic pencil box from China.

DEAR MR. SHAPIRO:

In your letter dated September 1, 1992, you requested a tariff classification ruling.

The sample submitted with your letter is a pencil box made from molded plastics. It measures approximately 8 inches by 1 1/2 inches by 7/8 inch.

The applicable subheading for the pencil box will be 3923.10.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for articles for the conveyance or packing of goods, of plastics \*\*\* boxes, cases, crates and similar articles. The rate of duty will be 3 percent *ad valorem*.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,  
Area Director,  
New York Seaport.

---

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
New York, NY, April 7, 1993.  
CLA-2-39:S:N:6:221 884087  
Category: Classification  
Tariff No. 3923.21.0019; 3923.29.0000

MS. BARBARA WILLEY  
APPLAUSE, INC.  
6101 Variel Avenue  
P.O. Box 4183  
Woodland Hills, CA 91367

Re: The tariff classification of a stationery kit in a looseleaf binder pencil case from Taiwan.

DEAR MS. WILLEY:

In your letter dated March 16, 1993, you requested a tariff classification ruling.

The set consists of a plastic pouch containing three wood cased pencils, a plastic pencil sharpener with a metal working edge, and a plastic 6 inch ruler. The pouch measures 9 1/2 inches by 4 inches, and is made of plastic sheeting heat sealed at the edges. The case has an interlocking type closure with plastic slide, and five holes stamped into one edge for placement onto the rings of a looseleaf binder. You indicate that the imported pouches will feature Minnie Mouse art work. The pouch and contents are considered to constitute a set for tariff classification purposes, with the essential character imparted by the pouch. The sample is being returned as you requested.

The applicable subheading for the stationery sets, when the pouches are made of polymers of ethylene, will be 3923.21.0019, Harmonized Tariff Schedule of the United States (HTS), which provides for articles for the conveyance or packing of goods, of plastics \* \* \* sacks and bags of polymers of ethylene, reclosable, with integral extruded closure, other. The rate of duty will be 3 percent *ad valorem*.

The applicable subheading for the stationery sets, when the pouches are made of other types of plastics will be 3923.29.0000, HTS, which provides for articles for the conveyance or packing of goods, of other plastics. The rate of duty will be 3 percent *ad valorem*.

Importations of this product might be subject to the provisions of Section 133 of the Customs Regulations if they copy or simulate a trademark, tradename or copyright registered with the United States Customs Service.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,  
Area Director,  
New York Seaport.

## [ATTACHMENT G]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
New York, NY, June 9, 1993.  
CLA-2-39:S:N:N6:221 886391  
Category: Classification  
Tariff No. 3923.29.0000

MS. MAUREEN SHOULE  
J.W. HAMPTON, JR. & CO., INC.  
15 Park Row  
New York, NY 10038

Re: The tariff classification of a stationary kit from China.

DEAR MS. SHOULE:

In your letter dated May 21, 1993, on behalf of F.W. Woolworth, you requested a tariff classification ruling.

The sample submitted with your letter is a stationary kit identified as item 151. It consists of a pencil pouch containing two cased pencils, an eraser, a ruler, a protractor, and a pencil sharpener with a metal working edge. The pouch measures 9 1/4 inches by 6 inches, is made of polyvinyl chloride plastic sheeting with a zipper closure, and has holes punched along one side so that it fits into a looseleaf binder. The kit is considered to be a set for tariff purposes, with the pouch imparting the essential character. The sample is being returned as you requested.

The applicable subheading for the stationary kit will be 3923.99.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for articles for the conveyance or packing of goods, of plastics \*\*\* sacks and bags, of other plastics. The rate of duty will be 3 percent *ad valorem*.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,  
Area Director,  
New York Seaport.

## [ATTACHMENT H]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
New York, NY, July 9, 1993.  
CLA-2-96:S:N:N3:113 887467  
Category: Classification  
Tariff No. 9609.10.0000; 3923.10.0000

MR. RYDEN L. RICHARDSON, JR.  
CARMICHAEL INTERNATIONAL SERVICE  
533 Glendale Boulevard  
Los Angeles, CA 90026-0057

Re: The tariff classification of stationery sets from Taiwan.

DEAR MR. RICHARDSON:

In your letter dated June 18, 1993, on behalf of Canasa Trading Corporation, you requested a tariff classification ruling.

The merchandise consists of three different sets of stationery items. The Snow White Stationery Set (FF-SN57) contains a memo pad, 2 pencils, a sharpener, an eraser, and a pair

of scissors. The Snow White Pencil Box with Stationery Set (FF-SN-24) is a pencil box containing 2 pencils, an eraser, a ruler, and a sharpener. The Snow White 5-Action Pencil Box has a molded plastic body that pops open at the push of a button to reveal various storage areas containing stationery items.

The applicable subheading for the Snow White Stationery Set (FF-SN57) will be 9609.10.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for pencils and crayons, with leads contained in a rigid sheath. The rate of duty will be 14 cents per gross plus 4.3 percent *ad valorem*. The specific rate of duty of 14 cents per gross is taken on the total number of pieces in the sets, not the number of sets.

The applicable subheading for the Snow White Pencil Box with Stationery Set (FF-SN-24) will be 3923.10.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for articles for the conveyance or packing of goods, of plastics \* \* \* boxes, cases, crates and similar articles. The rate of duty will be 3 percent *ad valorem*.

The applicable subheading for the Snow White 5-Action Pencil Box will be will be 3923.10.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for articles for the conveyance or packing of goods, of plastics \* \* \* boxes, cases, crates and similar articles. The rate of duty will be 3 percent *ad valorem*.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,  
Area Director,  
New York Seaport.

---

[ATTACHMENT I]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Washington, DC, September 8, 1992.

CLA-2 CO:R:C:F 952017 ALS

Category: Classification

Tariff No. 3923.29.0000

MR. FRED SHAPIRO  
FASCO (USA) LTD  
2 Three Gables Road  
Morris Township, NJ 07960

Re: Reconsideration of That portion of New York Ruling Letter (NYRL) 874137, dated May 19, 1992, as to Notebook Pouches.

DEAR MR. SHAPIRO:

In the above referenced letter you were advised that, as herein pertinent, notebook pouches were classifiable in subheading 3926.10.0000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as other articles of plastics, office and school supplies. We have been asked by our New York Seaport Area Office to reconsider the result of that ruling as to notebook pouches.

*Facts:*

The article under consideration are notebook pouches made of polyvinyl chloride which have holes punched in them so they can be placed in 3-ring loose-leaf binders and used to hold and transport pens, pencils, erasers, rulers and other small school supply items.

*Issue:*

Are the notebook pouches more specifically provided for in a subheading other than subheading 3926.19.0000, HTSUSA?

*Law and Analysis:*

Classification of merchandise under the HTSUSA is governed by the General Rules of Interpretation (GRI's) taken in order. GRI 1 provides that the classification is determined

first in accordance with the terms of the headings and any relative section and chapter notes. If GRI 1 fails to classify the goods, and if the heading and legal notes do not otherwise require, the remaining GRI's are applied taken in order.

In considering this matter we noted that substantially similar merchandise had been the subject of a prior Customs Headquarters Ruling Letter (HRL) 085526, dated December 21, 1989, and New York Ruling Letter (NYRL) 863506, dated June 12, 1991. Both of those rulings held that notebook pouches of plastic which are designed to hold school supplies such as pens and pencils and to facilitate their conveyance between various loci were classifiable in subheading 3923.29.0000, HTSUSA.

HRL 085526 had considered the applicability of subheading 4202.32, HTSUSA, relative to such items as trunks and suitcases but held that subheading 3923.29.0000, HTSUSA, more specifically described the merchandise. We agree with that conclusion.

In light of above, we reconsidered NYRL 874137, dated May 19, 1992, which advised you that subheading 3926.10.0000, HTSUSA, relative to school supplies, covered your notebook pouches. We noted that such pouches are normally used to carry school supply items and, therefore, may be broadly described as school supplies. We also noted that they may be utilized to carry other items.

In considering the propriety of subheadings 3923.29.0000 and 3926.10.0000, HTSUSA, to the notebook pouches, we found that the latter subheading generally covers notebook pouches but that the former subheading more specifically details the purpose of such articles. Accordingly, we have concluded that NYRL 874137 should be modified.

*Holding:*

Notebook pouches made of polyvinyl chloride which have holes punched in them so they can be placed in 3-ring loose-leaf binders and used to hold and transport pens, pencils, erasers, rulers and other small school supply items are classifiable in subheading 3923.29.0000, HTSUSA, and subject to a general rate of duty of 3 percent *ad valorem*.

NYRL 874137 is modified in accordance with the above holding pursuant to section 177.9(d), Customs Regulations (19 CFR 177.9(d)).

JOHN DURANT,  
Director,  
Commercial Rulings Division.

---

[ATTACHMENT J]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
Washington, DC, June 7, 1991.  
CLA-2 CO-R:C:F 088323 STB  
Category: Classification  
Tariff No. 9017.20.8000, 3923.10.0000

MR. JEREMY R. PAGE  
KATTEN, MUCHIN & ZAVIS  
525 West Monroe Street Suite 1600  
Chicago, IL 60606-3693

Re: Pencil boxes and geometry kits.

DEAR MR. PAGE:

This is in response to your letter of October 3, 1990, on behalf of Rolykit Inc., in which you requested a ruling concerning the tariff classification of merchandise described as pencil boxes and geometry kits under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Pictures of the merchandise were submitted with your request: an actual sample of the geometry kit was provided to our office at our meeting of February 8, 1991.

*Facts:*

The subject merchandise consists of a Rolykit Pencil Box (JS-210), a Rolykit Junior Pencil Box (JS-100) and a Rolykit Geometry Set (JS-270). The merchandise is imported by



Rolykit from its parent company in the Netherlands, Rolykit Product Division of Vander-molen bv. The importer states that these items are based on Rolykit's patented storage system whereby the sturdy plastic cases "unfold" to reveal a number of compartments. The case is then "refolded" into a compact case or kit for the storage or transporting of various items. The items which will be enclosed in the cases will vary depending on the particular use for which the entire kit is intended.

The Rolykit Pencil Box contains, and is sold with, eight fiber tipped pens, nine pencils, one ruler and one pencil sharpener. The Junior Pencil Box contains six fiber tipped pens, six pencils, one pencil sharpener and one eraser. The Geometry Set contains one geometric triangle, one compass, one tube of compass leads, one eraser, three lead pencils, one propelling pencil and one fine liner pen.

#### *Issue:*

Whether the geometry set should be classified under subheading 9017.20.8000, HTSUSA, as "other drawing, marking-out or mathematical calculating instruments" or under subheading 3923.10.0000, HTSUSA, as "articles for the conveyance of packing of goods, of plastics \* \* \* boxes \* \* \*"

Whether the pencil boxes and accompanying items should be classified under subheading 9609.10.0000, HTSUSA, as "pencils and crayons \* \* \*" or under subheading 3923.10.0000, HTSUSA, as "articles for the conveyance of packing of goods, of plastic \* \* \* boxes \* \* \*"

#### *Law and Analysis:*

The General Rules of Interpretation (GRI's) set forth the legal framework in which merchandise is to be classified under the HTSUSA. GRI 1 requires that classification be determined first according to the terms of the headings of the tariff and any relative section or chapter notes and, unless otherwise required, according to the remaining GRI's taken in order.

In the case of the instant merchandise, one item, the geometry set, can be classified by reference to GRI 1. Heading 9017, HTSUSA, provides specially for, among other items, "drawing sets." According to Explanatory Note 9017(A), this chapter includes, in pertinent part, the following:

##### (A) Drawing Instruments.

(3) Drawing compasses, dividers, reduction compasses, spring bows, mathematical drawing pens, dotting wheels, etc., whether in a case (e.g., drawing sets) or separately.

(5) Protractors, from the ordinary protractors found in drawing sets to the complex protractors as used, for example, in engineering.

In New York Ruling Letter (NYRL) 830304, dated June 17, 1988, Customs issued a ruling that is in accordance with Chapter 9017, HTSUSA, and the above Explanatory Notes and classified merchandise similar to the geometry set at issue as a "drawing set." The merchandise that was at issue in NYRL 830304 is described by Customs as follows:

The drawing set, sample submitted, consists of a compass, a pencil, a protractor, a six inch ruler, and two triangles. The last four items are all plastic. It is packaged in a flimsy clear plastic triangular container seven inches high with stickers describing the contents as a free style drawing set.

In your letter of February 13, 1991, you contend that the above merchandise can be distinguished from the geometry set now in question because the above merchandise is packaged in a "flimsy" storage container thus providing no possibility that the container in that case could provide the essential character of the set. It is your position that the essential character of the instant geometry set is provided by the container.

We disagree with this analysis. As noted above, the instant geometry set can be classified by reference to GRI 1; it is Customs position that this merchandise is specifically provided for in the HTSUSA. Therefore, we do not reach the discussion of essential character in GRI 3(b); essential character is not an issue in the classification of this merchandise.

The situation is different, however, for the classification of the pencil box and the junior pencil box. Neither of these items is classifiable in any one heading by itself under GRI 1. Therefore, reference to the subsequent GRI's is necessary. GRI 2 is not applicable here. GRI 3, however, is relevant. It provides, in pertinent part:

3. When by application of Rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable. The Explanatory Notes to GRI 3(b) provide guidance for determining what constitutes a "set." Note X states that the term "goods put up in sets for retail sale" shall be taken to mean goods which:

(a) consist of at least two different articles which are, *prima facie*, classifiable in different headings;

(b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and

(c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

The merchandise at issue clearly satisfies the above criteria of a "set." Both pencil boxes contain pencils and a pencil sharpener, which are classifiable in two different headings as well as various other items which are also classifiable in different headings under the HTSUSA. The items are sold together to carry out the specific activity of writing and they are put up in a manner suitable for sale directly to users without repacking.

The next issue to be resolved is which item within the set provides the essential character. Explanatory Note VIII to GRI 3(b) states that:

The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods.

It is our determination that the plastic, compartmentalized box provides the essential character of both of the subject pencil boxes. The boxes involved are of a unique, patented design. The marketing literature of the importer places more emphasis on the boxes than on the items that are included in these boxes. At one point, the literature states as follows: Millions of people know about the extremely useful storage box: the Rolykit. A unique storing system, which is patented in 36 countries and manufactured in Holland, Japan and the United States of America. Based on Rolykits unique closing mechanism we have developed a totally new product range, the Rolykit JS-200 series. Aimed at young people between the ages of 6 and 20. The product range consists of a Pencil Box, Paint Box and a Geometry Set.

Thus, the box plays an important role in the use of these kits. It is very probable that these boxes will remain in use long after the pens and pencils that initially accompany them have been used up and need replacement. Additionally, the box provides a majority of the bulk of the kits and a substantial amount of the value. The box accounts for approximately 50% of the cost of the pencil box; all of the other components combined account for the other 50%. The box provides over 50% of the value of all of the junior pencil box components.

The determination that the boxes provide the essential character of these pencil boxes is in accord with the current Customs position. In at least four recent Headquarters Ruling Letters (HRLs), the containers/organizers of various items have been deemed to constitute the essential character of the merchandise. In all of those cases, as occurs with the instant pencil boxes, the containers were constructed of sturdy materials, they were designed specifically and carefully for their particular use, and they provided a substantial portion of the bulk and value of the merchandise. These HRLs are HRL084715, dated August 24, 1989, HRL 084717, dated September 13, 1989, HRL 083262, dated July 26, 1982 and HRL 085872, dated January 29, 1990.

In contrast are the cases in which Customs has either not discussed the containers or has held that the containers did not constitute the essential character of the merchandise. In most of those cases, the containers were of flimsy construction, such as the various plastic pouch rulings where school supplies are packaged in cheap plastic pouches. One such ruling is HRL085356, dated November 20, 1989. It is significant that even in that ruling, no items, including the writing instruments, were found to constitute the essential character of the merchandise. In the other few rulings in which the containers were not found to constitute the essential character, the containers involved provided an insignificant portion of the value, and sometimes of the bulk, of the merchandise; the containers seemed to be designed primarily as a cheap packaging item that would be disposed of once the usefulness of the included items had expired, if not before. In such situations GRI 5(b) requires

that the packing materials and packing containers be classified along with the goods they contain.

*Holding:*

The merchandise identified as a "geometry set" is classified under subheading 9017.20.80, HTSUSA, the provision for "drawing, marking-out or mathematical calculating instruments (for example \*\*\* drawing sets \*\*\* , other." The applicable duty rate is 5.8% *ad valorem*.

The merchandise identified as "pencil box" and "junior pencil box" is classified under subheading 3923.10.0000, HTSUSA, the provision for "articles for the conveyance or packing of goods, of plastics \*\*\* boxes, cases, crates and similar articles." The applicable duty rate is 3% *ad valorem*.

JOHN DURANT,  
*Director,*  
*Commercial Rulings Division.*

---

[ATTACHMENT K]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
Washington, DC, December 21, 1989.  
CLA-2 CO:R:C:G 085526 SLR  
Category: Classification  
Tariff No. 3923.21.00; 3923.29.0000

BRENDA A. JACOBS, ESQ.  
SHARRETT, PALEY, CARTER & BLAUVELT, PC.  
1707 L Street, N.W.  
Suite 725  
Washington, D.C. 20036

Re: Pencil pouches.

DEAR MS. JACOBS:

This ruling is in response to your inquiry, dated August 25, 1989, on behalf of your client, K mart Corporation, requesting the proper classification of plastic looseleaf binder pencil cases under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

*Facts:*

Two samples were provided for our examination. Both are made of plastic sheeting material. Style 25-38-27 measures approximately 9-1/2 inches by 6 inches, with no gusset, with an interlocking Ziplock-type closure. Style 25-39-11 measures approximately 11 inches by 6-1/2 inches also with no gusset, with a flap and metal zipper closure. Both styles show a series of stamped holes which can be punched out to allow placement onto the rings of a looseleaf binder. Both items are intended to contain various school supplies such as pens, pencils, and erasers.

*Issue:*

What is the proper classification of the subject merchandise under the HTSUSA?

*Law and Analysis:*

Heading 4202, HTSUSA, provides for pouches and similar containers. Subheading 4202.32, HTSUSA, provides for articles of a kind normally carried in the pocket or in the handbag with outer surface of plastic sheeting or of textile materials.

Customs, in HRL 085356, dated November 20, 1989, classified pencil pouches in heading 4202: their size and generic characteristics strongly suggested they were to be carried in a handbag.

Here, the subject cases are designed to be carried inside a looseleaf binder, not a pocket or handbag. This is evident by the presence of stamped/punch out holes strategically located

to accommodate looseleaf binder rings. Additionally, we believe that the instant pouches are too large to be placed in a pocket or handbag. Consequently, they are not classifiable in subheading 4202.32, HTSUSA.

Heading 3923, HTSUSA, provides for articles for the conveyance or packing of goods, of plastic. The Explanatory Notes to the HTSUSA constitute the official interpretation, of the tariff at the international level. The Explanatory Note to heading 3923 indicates that the heading covers all articles of plastics commonly used for the packing or conveyance of all kinds of products. Inasmuch as the pencil pouches convey pens, pencils, erasers, and the like, they are classifiable under heading 3923, HTSUSA, as articles for the conveyance or packing of goods.

Heading 3926, HTSUSA, provides for other articles of plastics \* \* \* of headings 3901 to 3914. Subheading 3926.10.0000, HTSUSA, provides for office and school supplies. While this particular subheading seems to describe the subject pencil pouches, heading 3926 primarily functions as a basket provision for Chapter 39. Within the Chapter, heading 3923 provides a more specific description of the merchandise in issue at the heading level.

*Holding:*

The merchandise in issue is classifiable under heading 3923, HTSUSA. If made of polymers of ethylene, the subject pouches are classifiable in subheading 3923.21.0050, HTSUSA. If made of other plastics, they are classifiable in subheading 3923.29.0000. In either event, the duty remains the same: 3 percent *ad valorem*.

JOHN DURANT,  
Director,  
Commercial Rulings Division.

---

[ATTACHMENT L]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
Washington, DC, September 18, 1989.

CLA-2 CO-R:C:G 085224 DSN  
Category: Classification  
Tariff No. 3923.10.0000

MR. ALAN KURZ  
VICE PRESIDENT, PURCHASING  
PENTAPCO, INC.  
15401 S. Figueroa Street  
Gardena, CA 90247

Re: Modification of HRL 082828 of April 27, 1989.

DEAR MR. KURZ:

This ruling letter is to advise you that HRL 082828 of April 27, 1989, is being amended.

*Facts:*

The sample originally submitted is a molded plastic pencil case which measures approximately 8-1/2 inches by 2 inches. The top of the case is detachable and the bottom of the case has a divider at one end which is approximately 2 inches from that end. The top of the pencil holder has "Happy Bee" inscribed on it.

*Issue:*

Whether the pencil case was properly classified under subheading 4202.32.2000, HTSUSA.

*Law and Analysis:*

Classification of merchandise is in accordance with the General Rules of Interpretation (GRI's), taken in order. GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. In HRL 082828 we clas-

sified the pencil case at issue under subheading 4202.32.2000, HTSUSA, which provides for articles of the kind normally carried in the pocket or in the handbag, with outer surface of plastic sheeting, other. Inasmuch as Heading 4202, HTSUSA, provides only for " \* \* \* similar containers, of leather or of composition leather, of composition leather, of plastic sheeting, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials, if the pencil case is not of plastic sheeting it does not fall in Heading 4202. Therefore, if the pencil case does not have an outer surface of plastic sheeting, the issue becomes whether it is considered plastic articles for the conveyance or packing of goods. If so, the pencil case will be classifiable in the provision for these articles under subheading 3923.10.00, HTSUSA.

Webster's Third New International Dictionary of the English Language, unabridged (1986) defines the words "sheet" and "sheeting" as follows:

sheet 5: a broad thinly expanded portion of metal or other substance.

sheeting 1: a material in the form of sheets\*\*\*b: material (as a plastic) in the form of continuous film\*\*\*

In *Sekisui Products, Inc. v. United States*, 63 Cust. Ct. 123, C.D. 3885 (1969) the court cited with approval, Webster's definition of "sheets".

It is our position that the above cited definition requires a finding that an article which is made directly from a mass of plastic which never becomes a "sheet" or "sheeting" and which never has a "sheet" or "sheeting" applied to its surface cannot be classified under the provision for articles with outer surface of plastic sheeting under subheading 4202.32.2000, HTSUSA.

The question of whether the pencil case is an article for the conveyance or packing of goods must now be decided. The Explanatory Notes constitute the official interpretation of the tariff at the international level. The Explanatory Notes for heading 3923, HTSUSA, state that the heading covers all articles of plastics commonly used for packing or conveyance of all kinds of products. The pencil case at issue is used to convey pencils and pens. Therefore, the pencil case is classified under this heading. See HRL 083600 of May 24, 1989, and HRL 084657 of June 13, 1989, where a lipstick case and a cosmetic compact were classified under heading 3923, HTSUSA, based on the same analysis.

*Holding:*

The pencil case is classified under subheading 3923.10.0000, HTSUSA, which provides for articles for the conveyance or packing of goods, of plastics, boxes, cases, crates and similar articles, and dutiable at the rate of 3 percent *ad valorem*.

HRL 082828 of April 27, 1989 is modified in accordance with this ruling.

JOHN DURANT,

*Director,*

*Commercial Rulings Division.*

## [ATTACHMENT M]

DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE,  
Washington, DC, August 24, 1989.  
CLA-2 CO:R:C:G 084715 JBW  
Category: Classification  
Tariff No. 3923.10.0000

MS. MONA WEBSTER  
IMPORT CUSTOMS SPECIALIST  
TARGET STORES  
33 South Sixth Street  
P.O. Box 192  
Minneapolis, MN 55440-1392

Re: Stationery Kit.

DEAR MS. WEBSTER:

Your letter of May 1, 1989, addressed to our New York office, has been referred to this office for reply concerning the classification of your stationery kit under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

*Facts:*

The merchandise submitted for classification is a child's "Stationery Kit," Sample 87-7. This item consists of a rigid plastic box, two wooden pencils, a pencil sharpener, an eraser, two plastic clips, a small memo pad, and a ruler that has comb teeth on one edge and six stencil shapes cut out from the body. The box has two compartments that may house the pencils, sharpener, and eraser. The ruler will also fit within the confines of the box. These items are packaged for retail sale covered with clear plastic and attached to a cardboard backing.

*Issue:*

What is the appropriate classification for the merchandise under the HTSUSA?

*Law and Analysis:*

The General Rules of Interpretation (GRI's) provide the rules for classification under the HTSUSA. GRI 1 requires that classification be determined first according to the terms of the headings of the tariff and any relative section or chapter notes and, unless otherwise required, according to the remaining GRI's taken in order.

The individual items in the sample will be imported in a single retail package and are separately classifiable under different headings of the Nomenclature. GRI 3 applies when goods are classifiable under two or more headings; GRI 3(b) governs goods put up in sets for retail sale.

The first issue to be considered under GRI 3(b) is whether the items are put up in a set for retail sale. The Explanatory Notes, which represent the official interpretation of the HTSUSA at the international level, for GRI 3(b) define "goods put up in sets for retail sale." Such goods: (a) consist of at least two different articles that are classifiable in different headings, (b) consist of products put up together to meet a particular need or carry out a specific activity, and (c), are put up in a manner suitable for sale directly to users without repackaging.

The stationery kit constitutes a set under these criteria. The individual items are classifiable under two or more headings and are packaged in a manner suitable for sale directly to users without repackaging. The particular purpose or specific activity of these articles is to create a portable set of items for writing or drawing.

GRI 3(b) requires classification of these items as if they consisted of the component that gives them their essential character. The Explanatory Notes state that the factor determining essential character may vary as between different kinds of goods. The Notes suggest such factor may be determined by the nature of a component or material, its bulk, quantity, weight, or value, or by the role of a constituent material in relation to the use of the goods.

In the present case, the box imparts the essential character of the set. The value of the box comprises approximately one third of the total value of the entire set and is more than twice that of the ruler, the item of the next highest value. The bulk of the box exceeds all

other items. Finally, the box serves a central role for the set. The pencils, eraser, sharpener, and ruler all fit into the box.

The plastic box is classifiable as a plastic box for the conveyance of goods under Heading 3923. It is not a pencil- or pen-holder of the type enumerated under Heading 9608.

*Holding:*

The "Stationery Kit" submitted for classification is a set. The box imparts the essential character to the set. This item is therefore classifiable under subheading 3923.10.0000, HTSUSA, under the provision for plastic boxes for the conveyance or packaging of goods with a rate of duty of 3 percent *ad valorem*.

JOHN DURANT,

*Director,*

*Commercial Rulings Division.*

---

[ATTACHMENT N]

DEPARTMENT OF THE TREASURY,

U.S. CUSTOMS SERVICE,

*Washington, DC.*

CLA-2 RR:TC:FC 960196 MMC

Category: Classification

Tariff No. 3926.10

MR. D.F. MILLER AND MS. MAUREEN SHOULE

J.W. HAMPTON, JR. & CO., INC.

15 Park Row

New York, NY 10038

Re: NYRLs 847709, 886391 revoked; Stationery Kit in a looseleaf pencil pouch, pencil box; EN 39.26.

DEAR MR MILLER AND MS. SHOULE:

In January of 1992, New York Ruling Letter (NYRL) 847709 which classified a pencil box under heading 3923 of the Harmonized Tariff Schedule of the United States (HTS) was issued to you. Additionally, on June 9, 1993, NYRL 886391 was issued to you classifying a stationery set in a plastic looseleaf pencil pouch under heading 3923, HTS.

In NYRL 886391 you were advised that the pencil pouch provided the essential character of the stationery kit. While we continue to believe this is the case, upon further examination, we are now of the opinion that the pencil pouches as well as the pencil box of NYRL 847709 are properly classified under heading 3926, HTS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914."

*Facts:*

The article of NYRL 847709 is described as a moulded plastic pencil box. The article of NYRL 886391 was described as a stationery kit. It consisted of a plastic pouch containing two cased pencils, an eraser, a ruler, protractor and a pencil sharpener. The pouch measures 9 1/4" by 6" and is made of plastic sheeting sealed at the edges. One of the two long edges has 5 holes in it so that the pouch may be carried in a binder. The other long edge contains a zip-lock like closure.

*Issue:*

Whether the pencil boxes and pouches are classifiable as containers or as personal articles.

*Law and Analysis:*

Classification under the HTS is made in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes.

In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTS by offering guidance in understanding the scope of the headings and GRIs.

The headings under consideration are:

- 3923 Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics.
- 3926 Other articles of plastics and articles of other materials of headings 3901 to 3914.

In HRLs 953177 dated April 7, 1993, 954072 dated September 2, 1993, 954816 dated December 7, 1993, 957894 and 957895 both dated December 14, 1995, 955660 dated September 27, 1994, 955047 dated October 6, 1994, and 958174 dated January 31, 1996, Customs indicated that subheading 3923.10, HTS, provides for cases and containers of bulk goods and *commercial goods, not personal articles*. As the pencil pouches and boxes transport pens, pencils, erasers, etc. for personal use, they are not described by heading 3923 HTS.

The ENs to 3926 indicate that:

This heading covers articles, not elsewhere specified or included, of plastics (as defined in Note 1 to the Chapter) or of other materials of headings 39.01 to 39.14. They include:

\* \* \* \* \*

(4) Dust-sheets, protective bags, awnings, file-covers, document-jackets, book covers and reading jackets, and similar protective goods made by sewing or gluing together sheets of plastics.

\* \* \* \* \*

(5) Paperweights, paper-knives, blotting-pads, pen-rests, book-marks, etc.

\* \* \* \* \*

(10) Tool boxes or cases, not specially shaped or internally fitted to contain particular tools with or without their accessories (see the Explanatory Note to heading 42.02).

(11) Various other articles such as fasteners for handbags, corners for suitcases, suspension hooks, protective cups and glides for placing under furniture, handles (of tools, knives, forks, etc.), beads, watch "glasses", figures and letters, luggage label-holders.

The pencil pouches and boxes, which are most likely school supplies, are described by heading 3926, HTS, because they have substantial similarities to the articles listed in EN 39.26 and therefore belong to the same class or kind of articles. The pencil pouches and boxes are classifiable under heading 3926, HTS, specifically, subheading 3926.10, HTS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies."

#### *Holding:*

The pencil pouches and boxes are classifiable under subheading 3926.10, HTS, which provides for "Other articles of plastics and articles of other materials of heading 3901 to 3914: Office or school supplies" and has a column one duty rate of 5.3 percent *ad valorem*. NYRL 847709 and 886391 are revoked.

JOHN DURANT,  
Director,  
Tariff Classification Division.



## [ATTACHMENT O]

DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE,  
Washington, DC.  
CLA-2 RR:TC:FC 960153 MMC  
Category: Classification  
Tariff No. 3926.10

MR. TERRY M. KANE  
ROCHELLE'S, INC.  
SUNSET RIDGE BUSINESS PARK  
5841 Cedar Lake Road, Suite 202  
Minneapolis, MN 55416

Re: NYRL 858291 revoked; pencil boxes; EN 39.26.

DEAR MR. KANE:

On December 20, 1990, we issued New York Ruling Letter (NYRL) 858291, in which we classified plastic pencil boxes under the Harmonized Tariff Schedule of the United States (HTS). According to NYRL 858291, the subject articles are classifiable under heading 3923, HTS, as "Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics." Upon further examination, we are of the opinion that the pencil boxes are properly classified under subheading 3926.10, HTS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies."

*Facts:*

The pencil boxes are made of molded plastics. One of the "boxes" is shaped like a robot. All of the boxes contain a series of drawers and novelty compartments, as well as built-in pencil sharpeners and a magnifying lens. Two of the styles have built-in thermometers.

*Issue:*

whether the pencil boxes are classifiable as containers or as personal articles.

*Law and Analysis:*

Classification under the HTS is made in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes.

In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTS by offering guidance in understanding the scope of the headings and GRIs.

The headings under consideration are:

- |      |   |
|------|---|
| 3923 | Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics. |
| 3926 | Other articles of plastics and articles of other materials of headings 3901 to 3914.                                |

In HRLs 953177 dated April 7, 1993, 954072 dated September 2, 1993, 954816 dated December 7, 1993, 957894 and 957895 both dated December 14, 1995, 955660 dated September 27, 1994, 955047 dated October 6, 1994, and 958174 dated January 31, 1996, Customs indicated that heading 3923, HTS, provides for cases and containers of bulk goods and *commercial goods, not personal articles*. As the pencil boxes transport pens, pencils, erasers, etc. for personal use, they are not described by heading 3923, HTS.

The ENs to 3926 indicate that:

This heading covers articles, not elsewhere specified or included, of plastics (as defined in Note 1 to the Chapter) or of other materials of headings 39.01 to 39.14.

They include:

They include:

(4) Dust-sheets, protective bags, awnings, file-covers, document-jackets, book covers and reading jackets, and similar protective goods made by sewing or glueing together sheets of plastics.

(5) Paperweights, paper-knives, blotting-pads, pen-rests, book-marks, etc.

(10) Tool boxes or cases, not specially shaped or internally fitted to contain particular tools with or without their accessories (see the Explanatory Note to heading 42.02).

(11) Various other articles such as fasteners for handbags, corners for suit-cases, suspension hooks, protective cups and glides for placing under furniture, handles (of tools, knives, forks, etc.), beads, watch "glasses", figures and letters, luggage label-holders.

The pencil boxes, which are most likely school supplies, are described by heading 3926, HTS, because they have substantial similarities to the articles listed in EN 39.26 and therefore belong to the same class or kind of articles. The pencil boxes are classifiable under heading 3926, HTS, specifically, subheading 3926.10, HTS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies."

*Holding:*

The pencil boxes are classifiable under subheading 3926.10, HTS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies" and has a column one duty rate of 5.3 percent.

NYRL 858291 is revoked.

JOHN DURANT,  
*Director,*  
*Tariff Classification Division.*

[ATTACHMENT P]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
*Washington, DC.*  
CLA-2 RR:TC:FC 960158 MMC  
Category: Classification  
Tariff No. 3926.10

MS. MONA WEBSTER, IMPORT CUSTOMS SPECIALIST  
TARGET STORES  
33 South Sixth Street  
P.O. Box 1392  
Minneapolis, MN 55440-1392

Re: HRL 084715, NYRLs 863506, 863509 revoked; Stationery Kits; EN 39.26.

DEAR MS. WEBSTER:

On August 24, 1989, we issued Headquarters Ruling Letter (HRL) 084715 and New York Ruling Letters (NYRLs) 863506 and 863509. In each we classified Stationery Kits under heading 3923 of the Harmonized Tariff Schedule of the United States (HTS). In HRL 084715 and NYRLs 863509 and 863506 you were advised that the pencil box and pouch provided the essential character of the stationery kits. While we continue to believe this is the case, upon further examination, we are of the opinion that the pencil boxes and pouches are properly classified under heading 3926, HTS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914."

*Facts:*

The articles are described as "stationery kits." Two kits consist of a molded plastic box, and a combination of other supplies including pencils, a pencil sharpener, an eraser, plastic clips, a small memo pad, and a ruler with comb teeth on one edge and six stencil shapes carved out of the body. The box has two compartments which house the remaining articles. The third kit contains a combination of supplies which are held in a looseleaf pencil pouch. The pencil box kits are packaged for retail sale covered with clear plastic and attached to a cardboard backing.

*Issue:*

Whether the pencil boxes and pouches are classifiable as containers or as personal articles.

*Law and Analysis:*

Classification under the HTS is made in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes.

In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTS by offering guidance in understanding the scope of the headings and GRIs.

The headings under consideration are:

- |      |   |
|------|---|
| 3923 | Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics. |
| 3926 | Other articles of plastics and articles of other materials of headings 3901 to 3914.                                |

In HRLs 953177 dated April 7, 1993, 954072 dated September 2, 1993, 954816 dated December 7, 1993, 957894 and 957895 both dated December 14, 1995, 955660 dated September 27, 1994, 955047 dated October 6, 1994, and 958174 dated January 31, 1996, Customs indicated that heading 3923 HTS, provides for cases and containers of bulk goods and *commercial goods, not personal articles*. As the pencil boxes and pouches transport pens, pencils, erasers, etc. for personal use, they are not described by heading 3923, HTS.

The ENs to 3926 indicate that:

This heading covers articles, not elsewhere specified or included, of plastics (as defined in Note 1 to the Chapter) or of other materials of headings 39.01 to 39.14. They include:

(4) Dust-sheets, protective bags, awnings, file-covers, document-jackets, book covers and reading jackets, and similar protective goods made by sewing or glueing together sheets of plastics.

(5) Paperweights, paper-knives, blotting-pads, pen-rests, book-marks, etc.

(10) Tool boxes or cases, not specially shaped or internally fitted to contain particular tools with or without their accessories (see the Explanatory Note to heading 42.02).

(11) Various other articles such as fasteners for handbags, corners for suit-cases, suspension hooks, protective cups and glides for placing under furniture, handles (of tools, knives, forks, etc.), beads, watch "glasses", figures and letters, luggage label-holders.

The pencil boxes and pouches, which are most likely school supplies, are described by heading 3926, HTS, because they have substantial similarities to the articles listed in EN 39.26 and therefore belong to the same class or kind of articles. The pencil boxes and pouches are classifiable under heading 3926, HTS, specifically, subheading 3926.10, HTS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies."

*Holding:*

The stationery kits are classifiable under subheading 3926.10, HTS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies" and has a column one duty rate of 5.3 percent *ad valorem*.

HRL 084715 and NYRLs 863506 and 863509 are revoked.

JOHN DURANT,

Director,

Tariff Classification Division.

---

{ATTACHMENT Q}

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Washington, DC.

CLA-2 RR:TC:FC 960152 MMC

Category: Classification

Tariff No. 3926.10

MR. FRED SHAPIRO

FASCO(USA)LTD

2 Three Gables Road

Morris Township, NJ 07960

Re: NYRL 877744; HRL 952017 revoked; Looseleaf binder pencil pouches, pencil boxes; EN 39.26.

DEAR MR. FASCO:

On September 8 and 16, 1992, we issued respectively Headquarters Ruling Letter (HRL) 952017 and New York Ruling Letter (NYRL) 877744 which advised you of the classification of plastic looseleaf binder pencil pouches and boxes under the Harmonized Tariff Schedule of the United States (HTS). According to the rulings, the subject articles are classifiable under heading 3923, HTS, as "Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics." Upon further examination, we are of the opinion that the pencil pouches and boxes are properly classified under subheading 3926.10, HTS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies."

*Facts:*

The articles of HRL 952017 were described as notebook pouches made of polyvinyl chloride which have holes punched in them so they can be placed in 3-ring binders. The pouches are used to hold pens, pencils, erasers, rulers etc. The article of NYRL 877744 is described as a molded plastic pencil box approximately 8" by 1 1/2" by 7/8".

*Issue:*

Whether the pencil pouches and boxes are classifiable as containers of personal articles.

*Law and Analysis:*

Classification under the HTS is made in accordance with the General Rules of Interpretation (GRI). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes.

In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTS by offering guidance in understanding the scope of the headings and GRIs.

The headings under consideration are:

- 3923 Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics.
- 3926 Other articles of plastics and articles of other materials of headings 3901 to 3914.

In HRLs 953177 dated April 7, 1993, 954072 dated September 2, 1993, 954816 dated December 7, 1993, 957894 and 957895 both dated December 14, 1995, 955660 dated September 27, 1994, 955047 dated October 6, 1994, and 958174 dated January 31, 1996, Customs indicated that heading 3923, HTS, provides for cases and containers of bulk goods and *commercial goods, not personal articles*. As the pencil pouches and boxes transport pens, pencils, erasers, etc. for personal use, they are not described by heading 3923, HTS.

The ENs to 3926 indicate that:

This heading covers articles, not elsewhere specified or included, of plastics (as defined in Note 1 to the Chapter) or of other materials of headings 39.01 to 39.14.

They include:

\* \* \* \* \*

(4) Dust-sheets, protective bags, awnings, file-covers, document-jackets, book covers and reading jackets, and similar protective goods made by sewing or gluing together sheets of plastics.

(5) Paperweights, paper-knives, blotting-pads, pen-rests, book-marks, etc.

\* \* \* \* \*

(10) Tool boxes or cases, not specially shaped or internally fitted to contain particular tools with or without their accessories (see the Explanatory Note to heading 42.02).

(11) Various other articles such as fasteners for handbags, corners for suitcases, suspension hooks, protective cups and glides for placing under furniture, handles (of tools, knives, forks, etc.), beads, watch "glasses", figures and letters, luggage label-holders.

The pencil pouches and boxes, which are most likely school supplies, are described by heading 3926, HTS, because they have substantial similarities to the articles listed in EN 39.26 and therefore belong to the same class or kind of articles. The pencil pouches and boxes are classifiable under heading 3926, HTS, specifically, subheading 3926.10, HTS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies."

#### *Holding:*

The pencil pouches and boxes classifiable under subheading 3926.10, HTS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies" and has a column one duty rate of 5.3 percent *ad valorem*.

NYRL 87744 and HRL 952017 are revoked.

JOHN DURANT,  
Director,  
Tariff Classification Division.

## [ATTACHMENT R]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
Washington, DC.

CLA-2 RR:TC:FC 960198 MMC  
Category: Classification  
Tariff No. 3926.10

Ms. BARBARA WILLEY  
APPLAUSE, INC.  
6101 Varial Avenue  
P.O. Box 4133  
Woodland Hills, CA 91387

Re: NYRL 884087 revoked; Stationery Kit in a looseleaf pencil pouch; EN 39.26.

DEAR MS. WILLEY:

On April 7, 1993, New York Ruling Letter (NYRL) 884087 was issued to you classifying a stationery set in a plastic looseleaf pencil pouch under heading 3923 of the Harmonized Tariff Schedule of the United States (HTS). In NYRL 884087 you were advised that the pencil pouch provided the essential character of the stationery kit. While we continue to believe this is the case, upon further examination, we are of the opinion that the pencil pouches are properly classified under heading 3926, HTS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914."

*Facts:*

The article was described as a stationery kit. It consisted of a plastic pouch containing three wood cased pencils, a plastic pencil sharpener with a metal working edge, and a plastic 6" ruler. The pouch measures 9 1/2" by 4" and is made of plastic sheeting sealed at the edges. One of the two long edges has 5 holes in it so that the pouch may be carried in a binder. The other long edge contains a zip-lock type closure.

*Issue:*

Whether the pencil pouches are classifiable as containers or as personal articles.

*Law and Analysis:*

Classification under the HTS is made in accordance with the General Rules of Interpretation (GRI's). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes.

In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires. The Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTS by offering guidance in understanding the scope of the headings and GRI's.

The headings under consideration are:

- |      |   |
|------|---|
| 3923 | Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics. |
| 3926 | Other articles of plastics and articles of other materials of headings 3901 to 3914.                                |

In HRLs 953177 dated April 7, 1993, 954072 dated September 2, 1993, 954816 dated December 7, 1993, 957894 and 957895 both dated December 14, 1995, 955660 dated September 27, 1994, 955047 dated October 6, 1994, and 958174 dated January 31, 1996, Customs indicated that subheading 3923.10, HTS, provides for cases and containers of bulk goods and commercial goods, not personal articles. As the pencil pouches transport pens, pencils, erasers, etc. for personal use, they are not described by heading 3923 HTS.

The EN's to 3926 indicate that:

This heading covers articles, not elsewhere specified or included, of plastics (as defined in Note 1 to the Chapter) or of other materials of headings 39.01 to 39.14. They include:

\* \* \* \* \*

(4) Dust-sheets, protective bags, awnings, file-covers, document-jackets, book covers and reading jackets, and similar protective goods made by sewing or glueing together sheets of plastics.

(5) Paperweights, paper-knives, blotting-pads, pen-rests, book-marks, etc.

(10) Tool boxes or cases, not specially shaped or internally fitted to contain particular tools with or without their accessories (see the Explanatory Note to heading 42.02).

(11) Various other articles such as fasteners for handbags, corners for suitcases, suspension hooks, protective cups and glides for placing under furniture, handles (of tools, knives, forks, etc.), beads, watch "glasses", figures and letters, luggage label-holders.

The pencil pouches, which are most likely school supplies, are described by heading 3926, HTS, because they have substantial similarities to the articles listed in EN 39.26 and therefore belong to the same class or kind of articles. The pencil pouches are classifiable under heading 3926, HTS, specifically, subheading 3926.10, HTS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies."

*Holding:*

The pencil pouches are classifiable under subheading 3926.10, HTS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies" and has a column one duty rate of 5.3 percent *ad valorem*."

NYRL 884087 is revoked.

JOHN DURANT,  
*Director,*  
*Tariff Classification Division.*

---

[ATTACHMENT S]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
*Washington, DC.*

CLA-2 RR:TC:FC 960199 MMC  
Category: Classification  
Tariff No. 3926.10

MR. RYDEN L. RICHARDSON, JR.  
CARMICHAEL INTERNATIONAL SERVICE  
533 Glendale Boulevard  
Los Angeles, CA 90026-0057

Re: NYRL 887467 modified; Snow White 5-Action Pencil Box; EN 39.26.

DEAR MR. RICHARDSON:

On July 9, 1993, New York Ruling Letter (NYRL) 887467 was issued to you classifying a Snow White 5-Action pencil box under subheading 3923.10 of the Harmonized Tariff Schedule of the United States (HTS). We are now of the opinion that the Snow White 5-Action Pencil Box is properly classified under subheading 3926.10, HTS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies."

*Facts:*

The article is described as a Snow White 5-Action Pencil Box (FF-SN-24). The article is a plastic molded pencil box which contains two pencils, an eraser, a ruler and a pencil sharpener.

*Issue:*

Whether the pencil boxes are classifiable as containers or as personal articles.

*Law and Analysis:*

Classification under the HTS is made in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes.

In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTS by offering guidance in understanding the scope of the headings and GRIs.

The headings under consideration are:

- 3923 Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics.
- 3926 Other articles of plastics and articles of other materials of headings 3901 to 3914.

In HRLs 953177 dated April 7, 1993, 954072 dated September 2, 1993, 954816 dated December 7, 1993, 957894 and 957895 both dated December 14, 1995, 955660 dated September 27, 1994, 955047 dated October 6, 1994, and 958174 dated January 31, 1996, Customs indicated that subheading 3923.10, HTSUS, provides for cases and containers of bulk goods and *commercial goods, not personal articles*. As the pencil boxes transport pens, pencils, erasers, etc. for personal use, they are not described by heading 3923, HTS.

The ENs to 3926 indicate that:

This heading covers articles, not elsewhere specified or included, of plastics (as defined in Note 1 to the Chapter) or of other materials of headings 39.01 to 39.14. They include:

(4) Dust-sheets, protective bags, awnings, file-covers, document-jackets, book covers and reading jackets, and similar protective goods made by sewing or gluing together sheets of plastics.

(5) Paperweights, paper-knives, blotting-pads, pen-rests, book-marks, etc.

(10) Tool boxes or cases, not specially shaped or internally fitted to contain particular tools with or without their accessories (see the Explanatory Note to heading 42.02).

(11) Various other articles such as fasteners for handbags, corners for suitcases, suspension hooks, protective cups and glides for placing under furniture, handles (of tools, knives, forks, etc.), beads, watch "glasses", figures and letters, luggage label-holders.

The pencil boxes, which are most likely school supplies, are described by heading 3926, HTS, because they have substantial similarities to the articles listed in EN 39.26 and therefore belong to the same class or kind of articles. The pencil boxes are classifiable under heading 3926, HTS, specifically, subheading 3926.10, HTS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies."

*Holding:*

The Snow White 5-Action Pencil Boxes are classifiable under subheading 3926.10., HTS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies" and has a column one duty rate of 5.3 percent *ad valorem*.

NYRL 887467 is modified. Note, however, that this modification leaves unaffected other articles classified in NYRL 887467.

JOHN DURANT,  
Director,  
Tariff Classification Division.



## [ATTACHMENT T]

DEPARTMENT OF THE TREASURY,

U.S. CUSTOMS SERVICE,

Washington, DC.

CLA-2 RR:TC:FC 960154 MMC

Category: Classification

Tariff No. 3926.10

ROLYKIT INC

C/O MR. JEREMY R PAGE

KATTEN, MUCHIN &amp; ZAVIS

525 West Monroe Street, Suite 1600

Chicago, IL 60606-3693

Re: HRL 088323 modified; pencil boxes; EN 39.26.

DEAR MR. PAGE:

On June 7, 1991, we issued Headquarters Ruling Letter (HRL) 088323 in which we classified, among other articles, plastic pencil boxes under the Harmonized Tariff Schedule of the United States (HTS). In HRL 088323 you were advised that the plastic pencil boxes were classifiable under heading 3923, HTS, which provides for "Articles for the conveyance or packing of goods, of plastic." Upon further examination, we are of the opinion that the pencil boxes are properly classified under subheading 3926.10, HTS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies."

*Facts:*

The pencil boxes are made of molded plastic and "unfold to reveal a number of compartments."

*Issue:*

Whether the pencil boxes are classifiable as containers or as personal articles.

*Law and Analysis:*

Classification under the HTS is made in accordance with the General Rules of Interpretation (GRI). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes.

In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTS by offering guidance in understanding the scope of the headings and GRIs.

The headings under consideration are:

- 3923 Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics.
- 3926 Other articles of plastics and articles of other materials of headings 3901 to 3914.

In HRLs 953177 dated April 7, 1993, 954072 dated September 2, 1993, 954816 dated December 7, 1993, 957894 and 957895 both dated December 14, 1995, 955660 dated September 27, 1994, 955047 dated October 6, 1994, and 958174 dated January 31, 1996, Customs indicated that heading 3923, HTS, provides for cases and containers of bulk goods and *commercial goods, not personal articles*. As the pencil boxes transport pens, pencils, erasers, etc. for personal use, they are not described by heading 3923, HTS.

The ENs to 3926 indicate that:

This heading covers articles, not elsewhere specified or included, of plastics (as defined in Note 1 to the Chapter) or of other materials of headings 39.01 to 39.14. They include:

- (4) Dust-sheets, protective bags, awnings, file-covers, document-jackets, book covers and reading jackets, and similar protective goods made by sewing or gluing together sheets of plastics

(5) Paperweights, paper-knives, blotting-pads, pen-rests, book-marks, etc.

(10) Tool boxes or cases, not specially shaped or internally fitted to contain particular tools with or without their accessories (see the Explanatory Note to heading 42.02).

(11) Various other articles such as fasteners for handbags, corners for suitcases, suspension hooks, protective cups and glides for placing under furniture, handles (of tools, knives, forks, etc.), beads, watch "glasses", figures and letters, luggage label-holders.

The pencil boxes, which are most likely school supplies, are described by heading 3926, HTS, because they have substantial similarities to the articles listed in EN 39.26 and therefore belong to the same class or kind of articles. The pencil boxes are classifiable under heading 3926, HTS, specifically, subheading 3926.10, HTS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies."

*Holding:*

The pencil boxes are classifiable under subheading 3926.10, HTS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies" and has a column one duty rate of 5.3 percent *ad valorem*.

HRL 088323 is modified to reflect this change in classification.

JOHN DURANT,

*Director,*

*Tariff Classification Division.*

---

[ATTACHMENT U]

DEPARTMENT OF THE TREASURY,

U.S. CUSTOMS SERVICE,

*Washington, DC.*

CLA-2 RR:TC:FC 960155 MMC

Category: Classification

Tariff No. 3926.10

K MART CORPORATION

C/O BRENDA JACOBS, ESQ.

SHARRETS, PALEY, CARTER & BLAUVELT, P.C.

1707 L Street, N.W., Suite 725

Washington, DC 20036

Re: HRL 085526 revoked; pencil pouches; EN 39.26.

DEAR Ms. JACOBS:

On December 21, 1989, we issued Headquarters Ruling Letter (HRL) 085526 in which we classified plastic pencil looseleaf pencil pouches under the Harmonized Tariff Schedule of the United States (HTS). In HRL 085526 you were advised that the pencil pouches were classifiable under heading 3923, HTS, which provides, "Articles for the conveyance or packing of goods, of plastic." Upon further examination, we are of the opinion that the pencil pouches are properly classified under subheading 3926.10, HTS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies."

*Facts:*

Style 25-38-27 measure approximately 9 1/2" by 6" and has a ziplock-type closure. Style 25-39-11 measures 11" by 6 1/2" with a flap and metal zipper closure. Both have a series of 3 loose leaf hole openings on the long side opposite the closure.

*Issue:*

Whether the pencil pouches are classifiable as containers or as personal articles.

*Law and Analysis:*

Classification under the HTS is made in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes.

In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTS by offering guidance in understanding the scope of the headings and GRIs.

The headings under consideration are:

- 3923 Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics.
- 3926 Other articles of plastics and articles of other materials of headings 3901 to 3914.

In HRLs 953177 dated April 7, 1993, 954072 dated September 2, 1993, 954816 dated December 7, 1993, 957894 and 957895 both dated December 14, 1995, 955660 dated September 27, 1994, 955047 dated October 6, 1994, and 958174 dated January 31, 1996, Customs indicated that subheading 3923.10, HTS, provides for cases and containers of bulk goods and *commercial goods, not personal articles*. As the pencil pouches transport pens, pencils, erasers, etc. for personal use, they are not described by heading 3923, HTS.

The ENs to 3926 indicate that:

This heading covers articles, not elsewhere specified or included, of plastics (as defined in Note 1 to the Chapter) or of other materials of headings 39.01 to 39.14. They include:

(4) Dust-sheets, protective bags, awnings, file-covers, document-jackets, book covers and reading jackets, and similar protective goods made by sewing or glueing together sheets of plastics.

(5) Paperweights, paper-knives, blotting-pads, pen-rests, book-marks, etc.

(10) Tool boxes or cases, not specially shaped or internally fitted to contain particular tools with or without their accessories (see the Explanatory Note to heading 42.02).

(11) Various other articles such as fasteners for handbags, corners for suit-cases, suspension hooks, protective cups and glides for placing under furniture, handles (of tools, knives, forks, etc.), beads, watch "glasses", figures and letters, luggage label-holders.

The pencil pouches, which are most likely school supplies, are described by heading 3926, HTS, because they have substantial similarities to the articles listed in EN 39.26 and therefore belong to the same class or kind of articles. The pencil pouches are classifiable under heading 3926, HTS, specifically, subheading 3926.10, HTS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies."

*Holding:*

The pencil pouches are classifiable under subheading 3926.10, HTS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies" and has a column one duty rate of 5.3 percent *ad valorem*.

HRL 085526 is revoked.

JOHN DURANT,

Director,

Tariff Classification Division.

## [ATTACHMENT V]

DEPARTMENT OF THE TREASURY  
 U.S. CUSTOMS SERVICE,  
 Washington, DC.  
 CLA-2 RR:TC:FC 960157 MMC  
 Category: Classification  
 Tariff No. 3926.10

MR. ALAN KURZ, VICE PRESIDENT PURCHASING  
 PENTAPCO, INC.  
 15401 S. Figueroa Street  
 Gardena, CA 90247

Re: HRL 085224 revoked; pencil boxes; EN 39.26

DEAR MR. KURZ:

On September 18, 1989, we issued Headquarters Ruling Itetter (HRL) 085224, in which we classified plastic pencil boxes under the Harmonized Tariff Schedule of the United States (HTS). In HRL 085224 you were advised that the plastic pencil boxes were classifiable under heading 3923, which provides for "Articles for the conveyance or packing of goods, of plastic." Upon further examination, we are of the opinion that the pencil boxes are properly classified under subheading 3926.10, HTS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies."

*Facts:*

The article is described as a molded plastic pencil box which measures approximately 8 1/2" by 2". The top of the box is detachable and the bottom had a divider 2" from the end of the box. "Happy Bee" is subscribed on the lid of the box.

*Issue:*

Whether the pencil boxes are classifiable as containers or as personal articles.

*Law and Analysis:*

Classification under the HTS is made in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes.

In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTS by offering guidance in understanding the scope of the headings and GRIs.

The headings under consideration are:

- |      |   |
|------|---|
| 3923 | Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics. |
| 3926 | Other articles of plastics and articles of other materials of headings 3901 to 3914.                                |

In HRLs 953177 dated April 7, 1993, 954072 dated September 2, 1993, 954816 dated December 7, 1993, 957894 and 957895 both dated December 14, 1995, 955660 dated September 27, 1994, 955047 dated October 6, 1994, and 958174 dated January 31, 1996, Customs indicated that subheading 3923.10, HTS, provides for cases and containers of bulk goods and *commercial goods, not personal articles*. As the pencil boxes transport pens, pencils, erasers, etc. are for personal use, they are not described by subheading 3923.10, HTS.

The ENs to 3926 indicate that:

This heading covers articles, not elsewhere specified or included, of plastics (as defined in Note 1 to the Chapter) or of other materials of headings 39.01 to 39.14. They include:

- \* \* \* \* \*
- (4) Dust-sheets, protective bags, awnings, file-covers; document-jackets, book covers and reading jackets, and similar protective goods made by sewing or glueing together sheets of plastics.

(5) Paperweights, paper-knives, blotting-pads, pen-rests, book-marks, etc.

(10) Tool boxes or cases, not specially shaped or internally fitted to contain particular tools with or without their accessories (see the Explanatory Note to heading 42.02).

(11) Various other articles such as fasteners for handbags, corners for suitcases, suspension hooks, protective cups and glides for placing under furniture, handles (of tools, knives, forks, etc.), beads, watch "glasses", figures and letters, luggage label-holders.

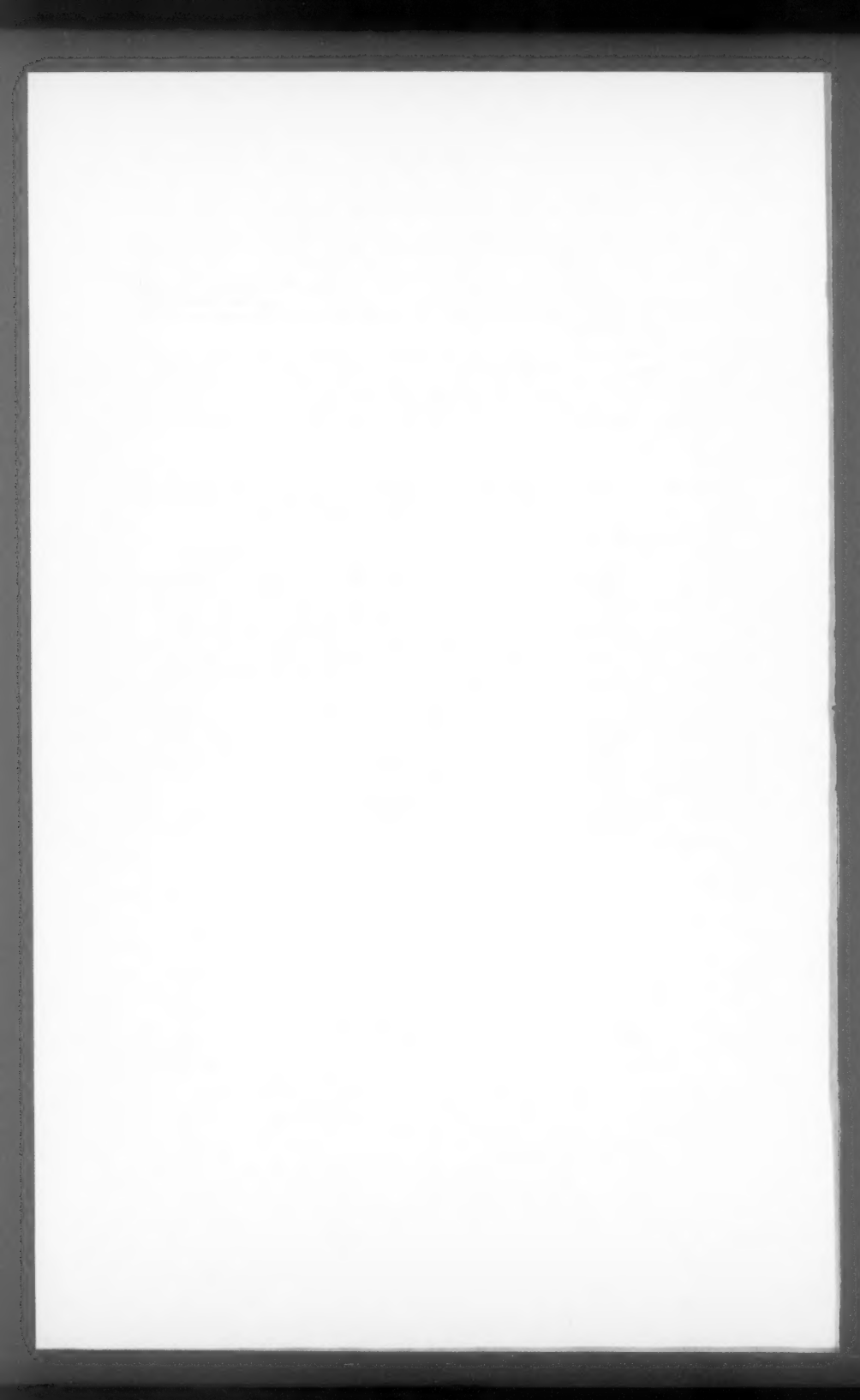
The pencil boxes, which are most likely school supplies, are described by heading 3926, HTS, because they have substantial similarities to the articles listed in EN 39.26 and therefore belong to the same class or kind of articles. The pencil boxes are classifiable under heading 3926, HTS, specifically, subheading 3926.10, HTS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies."

*Holding:*

The pencil boxes are classifiable under subheading 3926.10, HTS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies" and has a column one duty rate of 5.3 percent *ad valorem*.

HRL 085224 is revoked.

JOHN DURANT,  
*Director,*  
*Tariff Classification Division.*



# United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

*Chief Judge*

Gregory W. Carman

*Judges*

Jane A. Restani  
Thomas J. Aquilino, Jr.  
R. Kenton Musgrave

Richard W. Goldberg  
Donald C. Pogue  
Evan J. Wallach

*Senior Judges*

James L. Watson

Herbert N. Maletz

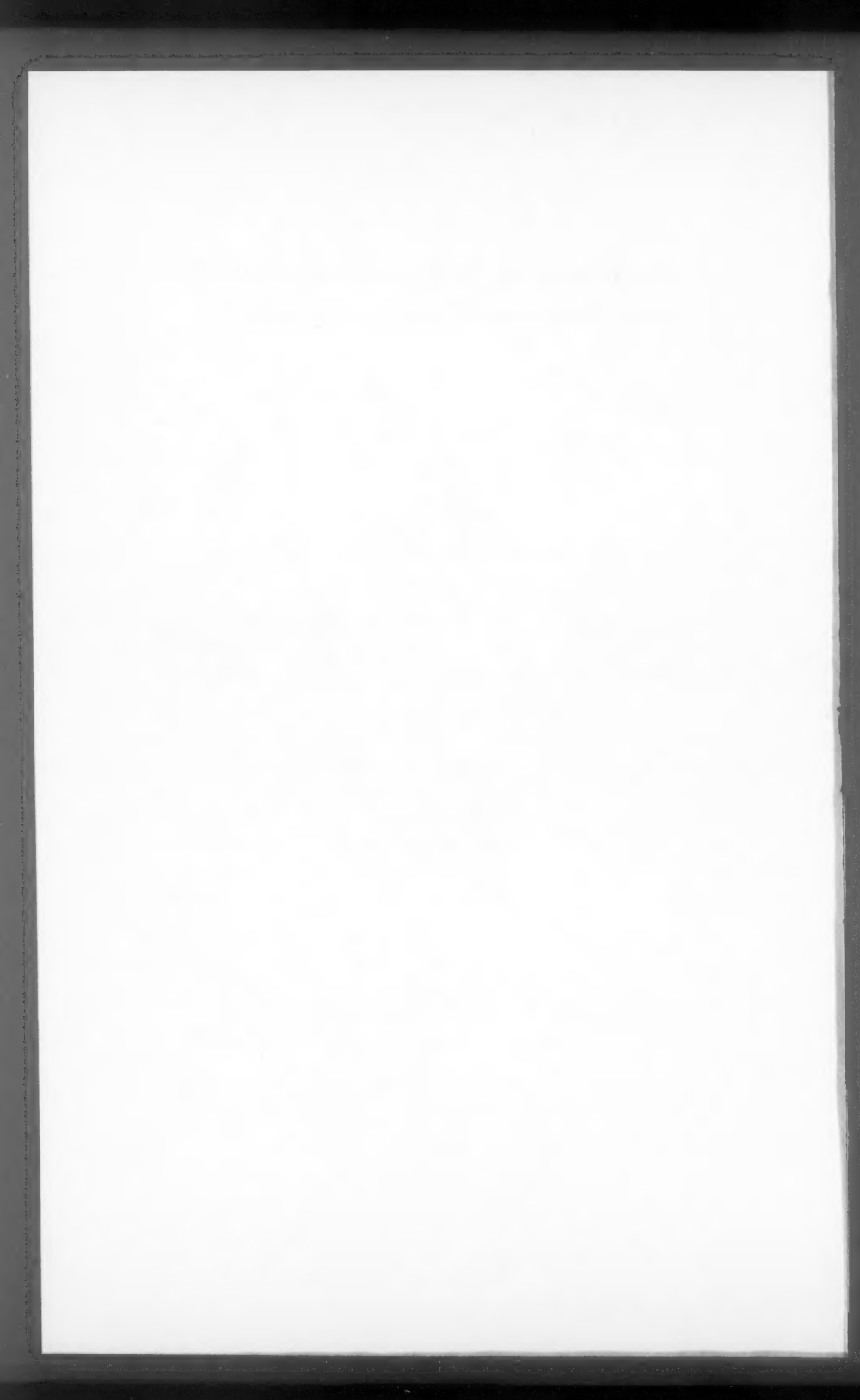
Bernard Newman

Dominick L. DiCarlo

Nicholas Tsoucalas

*Clerk*

Raymond F. Burghardt





# Decisions of the United States Court of International Trade

---

(Slip Op. 97-28)

MITSUBOSHI BELTING LTD. AND MBL (USA) CORP., PLAINTIFFS *v.*  
UNITED STATES, DEFENDANT

Court No. 93-09-00640

[Plaintiffs' motion for judgment on the agency record denied; action dismissed.]

(Decided March 12, 1997)

*Sonnenberg, Anderson & Rodriguez* (Steven P. Sonnenberg, Paul S. Anderson and Jacqueline M. Paez) for the plaintiffs.

*Frank W. Hunger*, Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice (*Michael S. Kane*); and *Stacy J. Ettinger*, U.S. Department of Commerce, of counsel, for the defendant.

## MEMORANDUM AND ORDER

AQUILINO, *Judge*: Following denial herein of their motion to amend the record compiled by the International Trade Administration, U.S. Department of Commerce ("ITA") *sub nom. Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Japan; Final Results of Antidumping Duty Administrative Review*, 58 Fed. Reg. 44,496 (Aug. 23, 1993), per the court's slip op. 94-23, 18 CIT 98 (1994), the plaintiffs move for judgment on the record as filed by the agency.

To quote from that opinion, familiarity with which is presumed, amendment had been sought

to include the complete agency record on file with the \* \* \* ITA \* \* \* at the time that the challenged determination was being conducted. This would include the agency record relating to the petition filed by The Gates Rubber Company, the agency record relating to the original less-than-fair-value investigation which led to the issuance of the antidumping order, and the agency record relating to the [prior] administrative review \* \* \* period \* \* \*.

18 CIT at 100. The motion for this relief showed, and the court found, that the plaintiffs had forsaken any judicial review of the results of that previous administrative review. See 18 CIT at 102. Furthermore, during the administrative proceedings now at bar,

MBL did not respond to the ITA's questionnaire and \* \* \* thus acknowledged that the agency's resort to best information otherwise

available was authorized. See 58 Fed.Reg. at 44,496. Moreover, the plaintiffs had an opportunity to submit information contained in the records of prior proceedings during the review in question but did not do so.

18 CIT at 103. Be those as they were, in their complaint and now motion for judgment thereon, the plaintiffs pray that the court direct the ITA

to consider all the relevant information available to the agency in its determination of what constitutes best information otherwise available in the Second Administrative Review, including that information provided by the plaintiffs in the First Administrative Review[.]

to recite their proposed form of remand order.

The court's jurisdiction to grant such relief is based on 28 U.S.C. §1581(c) and §2643(c)(1).

# I

The plaintiffs explain that their merchandise is covered by the "all other" antidumping rate of 93.16 percent in the ITA's determination of sales at less than fair value<sup>1</sup> which was derived from the petition as best information otherwise available within the meaning of 19 U.S.C. § 1677e(c) (1993). The gravamen of their complaint is pleaded as follows:

31. The \* \* \* Final Determination in the Second Administrative Review did not state whether the information available from the First Administrative Review was considered by the ITA as possible "best information otherwise available" \* \* \*

32. The \* \* \* Court \* \* \* held[] in *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185 (Fed[.] Cir. (T) 1990), that the ITA must "obtain and consider the most recent information in its determination of what is best information."

33. The most recent information obtained by the ITA is the information submitted by plaintiffs in response to the \* \* \* questionnaires in the First Administrative Review.

34. The \* \* \* Court \* \* \* stated in *Rhone Poulenc, Inc.* \* \* \*. that[,] "to be properly characterized as 'punitive,' the agency would have had to reject a low margin in favor of high margin information that was demonstrably less probative of the current conditions." *Id.* [,] 899 F.2d at 1190.

35. The information relied upon by the ITA \* \* \* in the Second Administrative Review is demonstrably less probative of [its] circumstances \* \* \* than the information provided by plaintiffs during the First Administrative Review.<sup>[2]</sup>

36. The ITA's choice of "best information otherwise available" is punitive and frustrates the remedial purpose of the antidumping statute.

<sup>1</sup> See 54 Fed.Reg. 25,314 (June 14, 1989). The rate set for such merchandise as a result of the agency's first administrative review was 52.60 percent. See 58 Fed.Reg. 30,018 (May 25, 1993).

<sup>2</sup> According to the plaintiffs, this is due to the fact that that information came from the petition. But the defendant counters that assigning the rate calculated for that first period "would mean that MBL has succeeded in manipulating the results of the second administrative review through its lack of cooperation." Defendant's Memorandum, p. 15.

The plaintiffs also complain that the time taken by the agency to render its first review determination denied them the

opportunity to make an informed decision as to whether or not they wanted to request an administrative review for the [second] period

\* \* \*

Complaint, para. 42.

At the time of that later review, the Trade Agreements Act of 1979, as amended, provided that the ITA, in making its determination,

shall, whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, use the best information otherwise available.

19 U.S.C. § 1677e(c) (1993). See also 19 C.F.R. §353.37 (1993). And in the determination at bar, the agency reiterated that its policy pursuant to this law has been to assign to an uncooperative party as a dumping margin (1) the highest rate found for any firm in the original investigation or previous administrative review or (2) the highest rate found in the current review. 58 Fed.Reg. at 44,496.

While courts have affirmed this approach<sup>3</sup>, the plain-tiffs attempt to rely on a statement in the legislative history of the statute to the effect that the ITA "should always use the most up-to-date information available"<sup>4</sup>, as interpreted by the court of appeals in *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185 (Fed.Cir. 1990). This reliance is of little avail, as that court opined that

it does not follow \* \* \* that the ITA must equate "best information" with "most recent information." What is required is that the ITA obtain and consider the most recent information in its determination of what is best information.

899 F.2d at 1190 (emphasis in original). Moreover, for the ITA's approach

to be properly characterized as "punitive," the agency would have had to reject low margin information in favor of high margin information that was demonstrably less probative of current conditions. Here, the agency only presumed that the highest prior margin was the best information of current margins. Since Rhone Poulenc offered no evidence showing that recent margins were more probative of current conditions than the highest prior margin, the agency found the highest prior margin to be the best information otherwise available.

We believe a permissible interpretation of the best information statute allows the agency to make such a presumption and that the presumption is not "punitive." Rather, it reflects a common sense inference that the highest prior margin is the most probative evidence of current margins because, if it were not so, the importer, knowing of the rule, would have produced current information sho-

<sup>3</sup> See, e.g., *Allied-Signal Aerospace Co. v. United States*, 996 F.2d 1185 (Fed.Cir. 1993).

<sup>4</sup> H.R. Rep. No. 317, 96th Cong., 1st Sess. 77 (1979).

wing the margin to be less. The agency's approach fairly places the burden of production on the importer, which has in its possession the information capable of rebutting the agency's inference.

*Id.* at 1190-91 (emphasis in original, footnote omitted).

Despite plaintiffs' attempt to distinguish this action, they do not show that their circumstances or the policy applied differ materially from those addressed in *Rhone Poulenc*. And despite their claims that reliance on information from the original investigation is punitive and that data from the first review were more probative, the plaintiffs point to no evidence on the record at bar in support of them. Hence, this court cannot accept the contention that it "would have been a useless waste of time and money"<sup>5</sup> to require resubmission of data already being considered by the agency as part of another administrative record.

It is well-settled that the ITA's assignment of the highest prior margin prevents rewarding of uncooperative respondents. *See, e.g., Allied-Signal Aerospace Co. v. United States*, 996 F.2d 1185, 1192 (Fed. Cir. 1993); *Florex v. United States*, 13 CIT 28, 33, 705 F. Supp. 582, 589 (1989). That is, a party cannot control the results of the administrative process via its own unresponsiveness. *See, e.g., Pistachio Group of the Ass'n of Food Ind. v. United States*, 11 CIT 668, 679, 671 F. Supp. 31, 40 (1987)

\* \* \* [A]n assumption is made that if that party possessed probative information justifying a lower rate than the highest previously published rate, it would have offered that information to Commerce as a matter of its economic interest. When the party does not respond, it is reasonable to presume that accurate information regarding that aspect of the duty calculation would have led to an assessment of equal or greater magnitude than the highest prior margin.

This Court has held that the choice of BIA need not be the "best" information the agency could have possibly acquired\* \* \*. [Instead, t]he "Court must uphold the ITA's use of best information available if the use of that data is supported by substantial evidence in the record and otherwise in accordance with law."

*Saha Thai Steel Pipe Co. v. United States*, 17 CIT 727, 732, 734 828 F. Supp. 57, 61-63 (1993), quoting *N.A.R. S.p.A. v. United States*, 14 CIT 409, 416, 741 F. Supp. 936, 942 (1990).

Although the plaintiffs claim that the ITA failed to show a rational relationship between its choice and their pricing, the agency relies on a "common sense inference" that the highest margins are the most probative since the plaintiffs have not rebutted this inference. *See* Defendant's Memorandum, pp. 18-19. When the agency determines that reliance on best information otherwise available is necessary, it has discretion in determining upon what to rely. Here, based on the record presented, the court concludes that the exercise of that discretion was in accordance with law.

<sup>5</sup> Plaintiffs' Reply Brief, p. 7. The court notes in passing that this and the other written submissions are of such quality as to obviate any need to burden the parties with oral argument, the formal motion for which is thus hereby denied.

## II

In view of the foregoing, as well as of the decision in *Bando Chemical Industries, Ltd. v. United States*, 17 CIT 798 (1993), *aff'd*, 26 F3d 139 (Fed.Cir. 1994), affirming the underlying, contingent material-injury determination of the International Trade Commission<sup>6</sup>, plaintiffs' motion for judgment on the ITA record must be denied and their action dismissed. Judgment will enter accordingly.

---

(Slip Op. 97-29)

TORRINGTON CO., PLAINTIFF AND DEFENDANT-INTERVENOR *v.* UNITED STATES, DEFENDANT, AND SKF USA INC. AND SKF SVERIGE AB, DEFENDANT-INTERVENORS AND PLAINTIFFS

Consolidated Court No. 95-03-00345

Plaintiff and defendant-intervenor, The Torrington Company ("Torrington"), moves the Court pursuant to Rule 56.2 of the Rules of this Court for judgment on the agency record, challenging certain aspects of the Department of Commerce, International Trade Administration's ("Commerce") final results of the administrative review, entitled *Anti-friction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders* ("Final Results"), 60 Fed. Reg. 10,900 (1995). Specifically, Torrington alleges that the following actions of Commerce were inconsistent with law: (1) refusing to apply the reimbursement regulation; (2) using below-cost sales in its calculation of profit for constructed value; (3) resorting to constructed value where sales were made below cost without considering other similar models; and (4) adjusting foreign market value for pre-sale inland freight expenses.

Defendant-intervenors and plaintiffs, SKF USA Inc. and SKF Sverige AB (collectively "SKF"), claim that Commerce erred in: (1) failing to apply a tax-neutral methodology in computing the value-added tax ("VAT") adjustment; (2) treating certain home market sales as related party sales; and (3) adopting an incorrect "all others" rate for ball bearings from Sweden.

*Held:* Torrington's motion for judgment on the agency record is denied. SKF's motion for judgment on the agency record is granted in part and denied in part. This case is remanded to Commerce to: (1) explain the circumstances in which it will apply the reimbursement regulation in an exporter's sales price situation; (2) apply a tax-neutral VAT methodology; (3) treat Astra and Asea Brown Boveri as unrelated to SKF Sverige AB; and (4) consider whether a company-specific arm's-length test is warranted and, if so, to apply such a test. Commerce's final determination, to the extent challenged herein, is sustained in all other respects.

[Torrington's motion for judgment on the agency record is denied; SKF's motion for judgment on the agency record is granted in part and denied in part. Case remanded.]

---

<sup>6</sup> Cf. Plaintiffs' Brief, pp. 23-24; Plaintiffs' Reply Brief, Point II; letter of Steven P. Sonnenberg, Esq. to the court (March 1, 1995).

(Dated March 7, 1997)

*Stewart and Stewart* (Terence P. Stewart, Wesley K. Caine, Geert De Prest and Lane S. Hurewitz) for plaintiff and defendant-intervenor The Torrington Company.

*Howrey & Simon* (Herbert C. Shelley, Alice A. Kipel, Anne Talbot and Patricia M. Steele) for defendant-intervenor and plaintiffs SKF USA Inc. and SKF Sverige AB.

Frank W. Hunger, Assistant Attorney General; David M. Cohen, Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice (*Velta A. Melnbrensis*); of counsel: Mark A. Barnett, Michelle K. Behaylo, Stacy J. Ettinger, Thomas H. Fine, Dean A. Pinkert and David J. Ross, Attorney-Advisors, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, for defendant.

#### OPINION

TSOUCALAS, *Senior Judge*: Plaintiff and defendant-intervenor The Torrington Company ("Torrington") moves this Court pursuant to Rule 56.2 of the Rules of this Court for judgment on the agency record challenging aspects of the final determination of the Department of Commerce, International Trade Administration ("Commerce"), of the fourth administrative review of antifriction bearings ("AFBs") from Sweden, entitled *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders ("Final Results")*, 60 Fed. Reg. 10,900 (1995). Defendant-intervenor and plaintiffs SKF USA Inc. and SKF Sverige AB (collectively "SKF") also challenge the fourth administrative review of AFBs from Sweden.

#### BACKGROUND

On May 15, 1989, Commerce published the antidumping duty orders on AFBs from Sweden. See *Antidumping Duty Orders: Ball Bearings, Cylindrical Roller Bearings, and Parts Thereof From Sweden*, 54 Fed. Reg. 20,907 (1989). The fourth administrative review encompasses imports of AFBs entered during the period of May 1, 1992 through April 30, 1993. See *Final Results*, 60 Fed. Reg. at 10,900. The present consolidated action concerns imports from Sweden.

On February 28, 1994, Commerce published the preliminary results of the fourth administrative review. See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, Sweden, Thailand, and the United Kingdom; Preliminary Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Notice of Intent To Revoke Orders (in Part)*, 59 Fed. Reg. 9,463 (1994). On February 28, 1995, Commerce published the Final Results at issue. See *Final Results*, 60 Fed. Reg. at 10,900.

Torrington contests the following actions of Commerce: (1) refusing to apply the reimbursement regulation; (2) using below-cost sales in its calculation of profit for constructed value; (3) resorting to constructed value where sales were made below cost without considering other similar models; and (4) adjusting foreign market value ("FMV") for pre-sale inland freight expenses.

SKF claims that Commerce erred in: (1) failing to apply a tax-neutral methodology in computing the value-added tax ("VAT") adjustment; (2) treating certain home market sales as related party sales; and (3) adopting an incorrect "all others" rate for ball bearings from Sweden.

On May 3, 1995, the Court granted Torrington's motion for a preliminary injunction enjoining the liquidation of the subject entries during the pendency of this litigation.

#### DISCUSSION

The Court's jurisdiction in this action is derived from 19 U.S.C. § 1516a(a)(2) (1994) and 28 U.S.C. § 1581(c) (1994).

The Court must uphold Commerce's final determination unless it is "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B) (1994). Substantial evidence is "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). "It is not within the Court's domain either to weigh the adequate quality or quantity of the evidence for sufficiency or to reject a finding on grounds of a differing interpretation of the record." *Timken Co. v. United States*, 12 CIT 955, 962, 699 F. Supp. 300, 306 (1988), *aff'd*, 894 F.2d 385 (Fed. Cir. 1990).

##### 1. Reimbursement Regulation:

In the Final Results, Commerce refused to apply 19 C.F.R. § 353.26 (1995), the so-called "reimbursement regulation," for the following reasons:

We disagree with Torrington \* \* \* that the Department should deduct from ESP [exporter's sales price] antidumping duties allegedly reimbursed by foreign producers to their U.S. affiliates. In this administrative review neither party has identified record evidence that there was reimbursement of antidumping duties. Evidence of reimbursement is necessary before we can make an adjustment to USP [U.S. price]. This has been our consistent interpretation of 19 C.F.R. 353.26, the reimbursement regulation, and was upheld by the Court in *Otokumpu Copper Rolled Products AB v. United States*, 829 F. Supp. 1371 (CIT 1993).

\* \* \* \* \*

We also disagree with Torrington \* \* \* that the amount of antidumping duties assessed on imports of subject merchandise constitutes a selling expense and, therefore, should be deducted from ESP.

60 Fed. Reg. at 10,907.

Torrington argues Commerce erred by failing to apply the reimbursement regulation in all instances where (1) transfer prices between related exporters and importers were less than the cost of production plus profit, or, alternatively, cost of production, and (2) actual dumping margins were found. Torrington's Mem. Supp. Mot. J. Agency R. at 12-21. In



the alternative, Torrington insists that Commerce should have at least further investigated the possible reimbursement. *Id.* at 21-22.

In response, Commerce states that there is no evidence in the administrative record that the exporter paid duties or reimbursed the related importer through alleged intra-company transfers. Commerce further argues that mere allegations that intra-company transfers were actually reimbursements of antidumping duties are insufficient to require Commerce to investigate the transfers. Commerce does request a remand, however, to explain the circumstances in which Commerce would apply the regulation in an ESP situation. Def.'s Partial Opp'n to Mots. J. Agency R. at 41-44.

The Court has already addressed this issue in previous cases dealing with the same administrative review. The Court found that Torrington failed to provide sufficient evidence of a link between intracorporate transfers and the reimbursement of antidumping duties to warrant requiring Commerce to commit resources to conduct an investigation. *INA Walzlager Schaeffler KG v. United States*, 21 CIT \_\_\_, \_\_\_, Slip Op. 97-12, at 42-43 (Feb. 3, 1997); *FAG Italia S.p.A. v. United States*, 20 CIT \_\_\_, \_\_\_, 948 F. Supp. 67, 74-75 (1996); *Torrington Co. v. United States*, 20 CIT \_\_\_, \_\_\_, 944 F. Supp. 930, 933-34 (1996). The Court did grant Commerce a remand, however, to explain the circumstances in which it will apply the regulation in an ESP situation. *INA Walzlager*, Slip Op. 97-12, at 42-43; *FAG Italia*, 20 CIT at \_\_\_, 948 F. Supp. at 75; *Torrington*, 20 CIT at \_\_\_, 944 F. Supp. at 934.

Torrington's alternative argument lacks merit as well. Torrington demands an investigation of reimbursement based on evidence that is admittedly weak. In fact, Torrington acknowledges that the evidence it provided to Commerce related to "indirect" transfers. See Torrington's Reply to Opp'n to Mot. J. Agency R. at 7. The evidence submitted by Torrington amounts to no more than "mere allegations" that cannot support requiring Commerce to investigate the transfers between related parties. See *Torrington Co. v. United States*, 19 CIT \_\_\_, \_\_\_, 881 F. Supp. 622, 631-32 (1995).

Accordingly, the Court sustains Commerce's decision not to apply the reimbursement regulation to adjust USP. The Court remands this issue to Commerce, however, to explain the circumstances in which it will apply the regulation in an ESP situation.

## 2. Calculation of Profit for Constructed Value:

Torrington claims Commerce should not have included below-cost sales in calculating profit for constructed value. According to Torrington, the inclusion of such sales seriously distorts the statutory framework since below-cost sales are excluded when sales form the basis of FMV pursuant to 19 U.S.C. § 1677b(b) (1988). Torrington contends the same sales should be disregarded when constructed value serves as FMV. Torrington's Mem. Supp. Mot. J. Agency R. at 22-29.

In the alternative, Torrington argues that even if the Court concludes below-cost sales were properly included in the constructed value cal-



culations, Commerce should have recomputed respondents' profits on the basis of the sample sales reported. Torrington submits that Commerce should have presumed profit based on sales of such or similar merchandise as reported by the respondents would be representative of the profit for the general class or kind of merchandise, and should have used the derived profit figures if they were higher than the statutory minimum of eight percent. *Id.* at 29-32.

Commerce responds that neither the definition of "constructed value" as provided in 19 U.S.C. § 1677b(e)(1)(B) (1988) nor the definition of "ordinary course of trade" contained in 19 U.S.C. § 1677(15) (1988) contains language suggesting that below-cost sales are to be considered outside the ordinary course of trade and, therefore, excluded from the profit calculation for constructed value. Def.'s Partial Opp'n to Mots. J. Agency R. at 44-48. In addition to rejecting Torrington's contention that below-cost sales are *per se* outside the ordinary course of trade, Commerce argues that Torrington failed to present any other evidence indicating that the below-cost sales were indeed outside the ordinary course of trade. *Id.* at 48-49.

Commerce also rebuts Torrington's alternative argument by stating that pursuant to its broad authority under 19 U.S.C. § 1677f-1 (1988) to use sampling, Commerce properly determined that the amount of profit calculated on the basis of such or similar merchandise would not be the appropriate basis for determining profit for the class or kind of merchandise involved. Def.'s Partial Opp'n to Mots. J. Agency R. at 50-52.

Again, this issue is one previously addressed by the Court. This Court has recently concluded in several cases that for below-cost sales to be excluded from a constructed value calculation, a petitioner must show that sales were made outside the ordinary course of trade. *INA Walzlager*, Slip Op. 97-12, at 43-44; *FAG Italia*, 20 CIT at \_\_\_, 948 F. Supp. at 75; *FAG U.K. Ltd. v. United States*, 20 CIT \_\_\_, \_\_\_, 945 F. Supp. 260, 269 (1996); *Torrington*, 20 CIT at \_\_\_, 944 F. Supp. at 934-35; *Timken Co. v. United States*, 20 CIT \_\_\_, \_\_\_, 930 F. Supp. 621, 624-25 (1996); *Federal-Mogul Corp. v. United States*, 20 CIT \_\_\_, \_\_\_, 918 F. Supp. 386, 403 (1996); *Torrington*, 19 CIT at \_\_\_, 881 F. Supp. at 633. In the case at bar, Torrington has failed to demonstrate the below-cost sales at issue were indeed outside the ordinary course of trade. Therefore, Commerce's decision to include below-cost sales in calculating profit for constructed value purposes is supported by the agency record and law.

The Court has also addressed and rejected Torrington's alternative argument. In *Federal-Mogul*, 20 CIT at \_\_\_, 918 F. Supp. at 403-04, the Court held that while Commerce has the authority to select appropriate samples for determining USP and FMV pursuant to 19 U.S.C. § 1677f-1 (1988),<sup>1</sup> Commerce also has the discretion not to use samples at all. See also *INA Walzlager*, Slip Op. 97-12, at 44. Consequently, Torrington's

<sup>1</sup> 19 U.S.C. § 1677f-1(b) states:

The authority to select appropriate samples and averages shall rest exclusively with the administering authority; but such samples and averages shall be representative of the transactions under investigation.

alternative argument lacks merit as well and the Court sustains Commerce on this issue.

### 3. *Use of Constructed Value:*

Torrington contends Commerce erred by resorting to constructed value after finding the most similar home market model was sold below cost in more than 90 percent of the home market sales without first determining whether there were any similar models to serve as priced-based comparisons. Torrington insists the statute indicates a preference for sales over costs comparisons. Torrington's Mem. Supp. Mot. J. Agency R. at 32-37.

Commerce responds that 19 U.S.C. § 1677b(b) directs Commerce to resort to constructed value after disregarding home market sales of "matched" bearings made below the cost of producing the merchandise in substantial quantities over an extended period of time. Def.'s Partial Opp'n to Mots. J. Agency R. at 54-59.

The Court has addressed this issue and concluded that Commerce's methodology is consistent with the statute. See *INA Walzlager*, Slip Op. 97-12, at 45; *Federal-Mogul*, 20 CIT at \_\_\_, 918 F. Supp. at 396-97; see also *Torrington*, 20 CIT at \_\_\_, 944 F. Supp. at 935-36; *FAG U.K.*, 20 CIT at \_\_\_, 945 F. Supp. at 270. In *Federal-Mogul*, the Court held "[t]here is no requirement in 19 U.S.C. § 1677b(b) that Commerce first investigate whether it can make another match based on the next most similar merchandise before resorting to constructed value." 20 CIT at \_\_\_, 918 F. Supp. at 397. Based on the Court's prior decisions, Commerce is sustained on this issue.

### 4. *Adjusting FMV for Pre-Sale Inland Freight:*

In spite of the decision of the United States Court of Appeals for the Federal Circuit ("CAFC") in *Torrington Co. v. United States*, 68 F.3d 1347, 1356 (Fed. Cir. 1995), holding that Commerce may deduct indirect home market transportation expenses from FMV pursuant to the ESP offset cap, Torrington contests Commerce's decision to adjust FMV for pre-sale inland freight expenses. Torrington's Mem. Supp. Mot. J. Agency R. at 37-38. Since the filing of these briefs, the CAFC has reaffirmed its position on this issue. See *Torrington Co. v. United States*, 82 F.3d 1039, 1047 (Fed. Cir. 1996). Therefore, in light of the decisions of the CAFC, the Court finds Commerce's actions to be consistent with law.

### 5. *Value-Added Tax Adjustment:*

SKF requests a remand for Commerce to apply a tax-neutral amount rather than rate methodology in computing the VAT adjustment. SKF's Mem. Supp. Mot. J. Agency R. at 21-36. Commerce agrees that a remand would be appropriate so that it may apply a tax-neutral methodology. Def.'s Partial Opp'n to Mots. J. Agency R. at 10-11. Torrington does not object to a remand on this issue. Torrington's Opp'n to Mot. J. Agency R. at 6.

In light of the decision of the CAFC in *Federal Mogul Corp. v. United States*, 63 F.3d 1572 (Fed. Cir. 1995), which upheld Commerce's applica-

tion of a tax-neutral methodology, the Court agrees with the parties that a remand is appropriate. Therefore, this case is remanded to Commerce to apply its tax-neutral methodology.

6. *Exclusion of SKF's Related Party Sales:*

In the Final Results, Commerce excluded certain home market related party sales from its calculation of FMV after concluding that "the average prices of certain models sold to related parties [were] not comparable to the average prices of these models sold to unrelated parties." 60 Fed. Reg. at 10,946. Commerce also excluded related party sales from its calculation of profit for constructed value. *Id.* at 10,922.

SKF challenges Commerce's conclusion that certain home market customers were related to SKF. AB Investor, as conceded by SKF, has a 38.9 percent interest in the voting shares of AB SKF, which in turn owns 100 percent of SKF Sverige. SKF's Mem. Supp. Mot. J. Agency R. at 41. SKF admits that AB Investor meets the definition of a related party, as provided in 19 U.S.C. § 1677(13)(D) (1988), as it holds more than 20 percent of the voting shares in SKF's home market customers SAAB Scania, Stora, Atlas Copco, Electrolux and Ericsson (collectively "the Five Companies"). *Id.* However, SKF points to record evidence to support its contention that AB Investor was not in a position to influence prices. According to SKF, AB Investor does not exercise any control over the business of SKF Sverige. Thus, SKF maintains that Commerce's treatment of the Five Companies as related parties, while technically consistent with statutory requirements, contravenes the purpose of the statute which is to identify situations in which prices may be manipulated. *Id.* at 41-44.

Assuming *arguendo*, that Commerce properly concluded SKF Sverige was related to the Five Companies, SKF asserts that Commerce improperly treated two companies—Astra and Asea Brown Boveri ("ABB")—as related to SKF Sverige. SKF highlights evidence indicating that AB Investor owns only ten percent of the voting stock of ABB. In accordance with this evidence, SKF alleges that Commerce determined ABB was not related to SKF Sverige but, nevertheless, excluded SKF Sverige's sales to all ABB customers for purposes of determining FMV. *Id.* at 45-46. In addition, SKF states that no evidence exists on the record regarding any holding by AB Investor in Astra. *Id.* at 46.

SKF also objects to Commerce's application of the arm's-length test because it allegedly fails to determine whether the relationship through common ownership actually affected prices. Commerce's test, according to SKF, ignores degrees of ownership and, therefore, degrees of influence. As a remedy, SKF urges the Court to require Commerce to analyze the sales of related parties on a company-specific basis. SKF emphasizes the fact that while it raised this concern at the administrative level, Commerce failed to address SKF's arguments in the Final Results. Furthermore, SKF disputes the accuracy of the arm's-length test because Commerce included ABB and Astra on the list of related parties. SKF's final contention regarding the arm's-length test is that the test

does not consider quantity in spite of SKF's insistence that SKF's prices were affected by sales quantity. *Id.* at 48-63.

Finally, SKF asserts that Commerce deviated from past practice, without explanation, by excluding related party sales from the calculation of profit for constructed value. Even if Commerce's exclusion was proper, SKF claims the arm's-length test was not applicable because profit, not price, was the element of value to be considered pursuant to 19 U.S.C. § 1677b(e)(2). *Id.* at 63-65.

In response, Commerce emphasizes that each of the Five Companies meets the statutory definition of a related party. Commerce submits that the issue of whether the relationship between the parties influenced price is determined through the application of the arm's-length test and is irrelevant to the initial determination of whether the parties are indeed related. Commerce emphasizes that SKF cites neither statutory language nor legislative history requiring Commerce to investigate SKF's financial relationships. Def.'s Partial Opp'n to Mots. J. Agency R. at 14-16.

Regarding Astra, Commerce concedes that AB Investor may not have twenty percent of the voting power, but insists that record evidence (an article in *Business Week*) indicates that AB Investor owns significant holdings in Astra. Commerce states that SKF failed to provide information regarding the percentage of voting shares of Astra held by AB Investor in spite of Commerce's specific request to provide such information for any company to which SKF sold its AFBs. Therefore, Commerce states that it relied upon an adverse inference in reaching its decision to treat Astra as a related party. *Id.* at 17-18.

Commerce requests a remand, however, to correct the related party analysis and margin calculation in order to treat ABB as unrelated to SKF. Commerce admits that because AB Investor controls less than twenty percent of ABB's voting shares, ABB is not a related party. *Id.* at 19.

Commerce defends the application of its arm's-length test and insists that SKF presented no factual or legal arguments at the administrative level to persuade Commerce to alter its methodology. Therefore, Commerce insists that SKF failed to exhaust its administrative remedies. *Id.* at 20-22. In the alternative, Commerce asserts that SKF did not establish any relationship between quantity and price. *Id.* at 22-25. Commerce concedes, however, that if the Court finds that SKF did exhaust administrative remedies, this issue should be remanded to Commerce so that it may determine whether the application of a company-specific arm's-length test is warranted. *Id.* at 22.

Finally, Commerce addresses the calculation of profit for constructed value concern by arguing that SKF is essentially seeking an advisory opinion on this issue because SKF has failed to demonstrate that the exclusion of related party sales for the calculation of profit for constructed value affected SKF's margins. *Id.* at 25-27. Alternatively, Commerce counters that in the Final Results it sufficiently explained its decision to

depart from prior practice. With regard to the inclusion of ABB and Astra in these calculations, Commerce insists it properly treated Astra as a related party but requests a remand to treat ABB as an unrelated customer for all purposes. *Id.* at 27-29.

Torrington essentially agrees with the positions taken by Commerce. Torrington's Opp'n to Mot. J. Agency R. at 9-14.

In rebuttal, SKF argues that Commerce's explanation of its reasons for treating Astra as a related party was not in either the preliminary analysis memorandum or the Final Results. As such, SKF urges the Court to reject Commerce's *post hoc* rationalizations. SKF's Reply to Opp'n to Mot. J. Agency R. at 28-31. Furthermore, SKF claims that Commerce may not presume that Astra is a related party based upon an adverse inference. *Id.* at 31-36.

Regarding the arm's-length test, SKF emphasizes that it adequately raised its objections to the test in its case brief during the proceedings below to satisfy the exhaustion requirements. *Id.* at 39-42.

Finally, SKF insists that the issue of excluding related party sales from the calculation of profit for constructed value may be addressed by the Court without a prior showing of an effect on the margin. *Id.* at 44-47.

a. *The Five Companies, Astra and ABB:*

The definition of a related party pursuant to 19 U.S.C. § 1677(13)(D) is as follows:

any person or persons, jointly or severally, directly or indirectly, through stock ownership or control or otherwise, own or control in the aggregate 20 percent or more of the voting power or control in the business carried on by the person by whom or for whose account the merchandise is imported into the United States, and also 20 percent or more of such power or control in the business of the exporter, manufacturer, or producer.

Commerce's regulations instruct Commerce to use a related party sale in its calculations of FMV "only if satisfied that the price is comparable to the price at which the producer or reseller sold such or similar merchandise to a person not related to the seller." 19 C.F.R. § 353.45(a) (1995).

The Court will first address the issue concerning the Five Companies. As SKF concedes, each of the Five Companies falls within the statutory and regulatory definitions of a "related party." SKF primarily relies upon Commerce's actions in the administrative determination, entitled *Antidumping; Final Determination of Sales at Not Less Than Fair Value; Certain Forged Steel Crankshafts From Japan* ("Crankshafts"), 52 Fed. Reg. 36,984, 36,985-86 (1987), to support its assertion that Commerce should consider the underlying purpose of 19 U.S.C. § 1677(13)(D). In *Crankshafts*, Commerce refused to treat two companies as related where a number of companies, in aggregate, owned over twenty percent of the two relevant companies. In rejecting the petition-

er's argument that the companies should be treated as related, Commerce stated the following:

The petitioner's interpretation of section 771(13)(D) [of the Tariff Act of 1930, as amended, 19 U.S.C. § 1677(13)(D)] would lead to absurd results in this instance where common shareholders are not capable of effecting what the provision intended to prevent—the shifting of selling expenses in order to influence prices. Under petitioner's interpretation, any two publicly traded companies would have to be considered related if any number of individuals or companies that owned shares in both, owned, in the aggregate, 20 percent of each company.

52 Fed. Reg. at 36,986. The facts in this case do not resemble those of *Crankshafts*. In *Crankshafts*, Commerce rejected the petitioner's interpretation of the statute and, in so doing, relied on the underlying purpose of the statute. In contrast, the issue presently before the Court does not involve questionable statutory interpretation. As SKF concedes, each of the Five Companies individually meets the statutory requirements for being labeled a related party. Since AB Investor owns a 38.9 percent interest in the voting shares of AB SKF (which owns 100 percent of SKF Sverige) and more than 20 percent of the voting shares in each of the Five Companies, there is no issue regarding Commerce's interpretation of the statute. See SKF's Supplemental Questionnaire Response, P.R. Doc. No. 35, SKF's App., Ex. 4, at 2. Commerce simply applied the definition stated in 19 U.S.C. § 1677(13)(D). To engage in the analysis suggested by SKF, the Court would have to ignore the language of the statute in favor of applying a more complicated and fact-specific inquiry. Requiring Commerce to look beyond the financial relationships of the companies at this stage would obviate the need for a statute setting forth specific guidelines for determining whether parties are indeed related. Section 1677(13)(D) provides a bright-line test for defining related parties. Commerce followed the guidelines and properly treated the Five Companies as related to SKF Sverige.

Commerce's treatment of Astra as a related company, however, raises different concerns. In reviewing Commerce's actions, the Court is restricted to the administrative record and the evidence contained therein. *Atcor, Inc. v. United States*, 11 CIT 148, 154, 658 F. Supp. 295, 300 (1987). The Court will not accept *post hoc* rationalizations in place of evidence on the agency record. *Id.*; see also *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168–69 (1962). There is insufficient evidence in the administrative record before the Court to support Commerce's treatment of Astra. The only record of AB Investor's holdings in Astra is an article published in *Business Week* prior to the issuance of the supplemental questionnaire. See *Business Week*, Aug. 9, 1993, at 76, P.R. Doc. No. 73, Def.'s App., Ex. 1. In that article, the author valued AB Investor's shares in Astra at one billion dollars. See *id.* There is no indication in the article of the percentage of voting stock owned by AB Investor. Furthermore, Commerce made no reference to the article or any other basis for treating Astra as a related company in the Final Re-



sults. In reference to its decision to treat certain companies as related, Commerce merely stated that it "preliminarily determined that SKF-Sweden made HM [home market] sales to [related parties]." 60 Fed. Reg. at 10,946. Commerce did not mention—as it does in its brief before the Court—a decision to make an adverse inference regarding AB Investor's holdings in Astra. Due to the lack of any record evidence indicating that AB Investor had control of at least 20 percent of Astra's voting stock, and any reference by Commerce to applying an adverse inference against SKF, the Court cannot sustain Commerce's treatment of Astra. Thus, this issue is remanded to Commerce to treat Astra as an unrelated company.

Regarding ABB, the record indicates that AB Investor held only 10 percent of the voting power in that company. SKF's Supplemental Questionnaire Response, P.R. Doc. No. 35, SKF's App., Ex. 4, at 2. ABB does not meet the statutory definition of a related party and, therefore, Commerce appropriately agrees with SKF's remand request to treat ABB as unrelated to SKF. Therefore, this case is remanded for Commerce to correct the margin calculation to reflect that ABB is unrelated to SKF.

*b. Arm's-Length Test:*

Turning to the application of the arm's-length test, the Court notes at the outset that SKF raised this issue at the administrative level. In its case brief submitted on March 21, 1994, SKF criticized the arm's-length test because Commerce "did not individually analyze the companies involved and did not consider the relative quantities involved." SKF's Case Brief of March 21, 1994, P.R. Doc. No. 66, SKF's App., Ex. 7, at 3. SKF further stated, "[i]n light of the nature of the ownership interest, the lack of control and the absence of a sufficient price comparison, the Department should not exclude the affected transactions." *Id.* These statements were sufficient to satisfy the exhaustion requirement. Therefore, the Court will now address the merits of SKF's concerns.

Consistent with the appropriate deference this Court must afford Commerce, the Court will uphold Commerce's arm's-length test unless it is unreasonable. In *Usinor Sacilor v. United States*, 18 CIT 1155, 1158, 872 F. Supp. 1000, 1004 (1994), the Court rejected Usinor's claim that Commerce should have considered quantity in its arm's-length analysis for the following reasons:

Usinor has failed to demonstrate that application of Commerce's test resulted in actual distortion of price comparability. Usinor is unable to point to any record evidence showing that its products were sold at different prices for different quantities, or that Commerce actually compared Usinor's sales to related parties in larger quantities and at lower prices, with its sales to unrelated parties in smaller quantities and at higher prices. Although Usinor had quantity discount price lists for various products, the record shows that

the actual sales prices were determined by Usinor's negotiation with individual customers, and not based solely on quantity levels.

Similar to Usinor, SKF has failed to point to record evidence providing a direct link between prices and quantity. The tables provided by SKF indicating that transactions involving higher quantities were, on average, made at lower prices, does not sufficiently show that the difference in price was due to quantity because SKF does not rule out other factors as causes for the differential. In fact, SKF admits that quantity is not the sole element affecting price. See SKF's Mem. Supp. Mot. J. Agency R. at 58-59. While the Court will not go as far as to require a respondent to demonstrate that quantity is the sole factor affecting price, the respondent must do more than indicate a possible correlation between price and quantity. Based on the record, Commerce's decision not to consider quantity in conducting its arm's-length test is reasonable. However, as Commerce concedes, in the past Commerce has applied its arm's-length test on a company-specific basis. Commerce failed to consider a company-specific approach in this case and, therefore, this case is remanded to Commerce to determine whether such a test is warranted and, if so, to apply that test.

*c. Calculation of Profit for Constructed Value*

Finally, Commerce's decision in this review to exclude related party sales from the calculation of profit for constructed value was recently upheld by this Court in *INA Walzlager*, Slip Op. 97-12, at 13-14. In that case, the Court upheld the methodology as it was applied to INA, the one respondent whose profit on sales to unrelated parties was greater than eight percent.<sup>2</sup> While INA's objection to the exclusion of related parties sales was based on different arguments than those of SKF, the Court recognized in *INA Walzlager*, Slip Op. 97-12, at 13, that 19 U.S.C. § 1677b(e)(2) grants Commerce the authority to disregard a related party sale if any amount representing an element of that sale—in this case, profit—"does not fairly reflect the amount usually reflected in sales in the market under consideration." Commerce cited this provision in the Final Results to justify its decision to exclude SKF's related party sales from the constructed value calculation. See 60 Fed. Reg. at 10,922. Commerce's decision to depart from prior practice, as explained in the Final Results, is properly grounded in the statute and, therefore, reasonable. The Court sustains Commerce's exclusion of related party sales from the calculation of constructed value, but remands this case to treat ABB and Astra as unrelated parties in this and all calculations.

*7. "All Others" Rate:*

Commerce adopted the "all others" cash deposit rate published in the third administrative review for Swedish ball bearings in the review at issue. *Final Results*, 60 Fed. Reg. at 10,901-02. SKF challenges Com-

<sup>2</sup> INA specifically objected to the use of the arm's-length test and variance test as it was applied to INA. *INA Walzlager*, Slip Op. 97-12, at 8. INA also challenged Commerce's selection of profit earned on home market sales as best evidence available once Commerce decided to disregard INA's related party sales in the profit calculation. *Id.* at 9. For SKF, Commerce simply applied the statutory minimum of eight percent. *Final Results*, 60 Fed. Reg. at 10,922.



merce's actions claiming that the "all others" rate relied upon is inaccurate. SKF argues that the "all others" rate used in the third administrative review failed to reflect a downward adjustment required by an appeal of the original less than fair value investigation. SKF insists that the error is an obvious one that should have been corrected by Commerce. SKF's Mem. Supp. Mot. J. Agency R. at 66-73.

Commerce responds that SKF lacks standing to challenge the "all others" rate. Commerce maintains that because SKF possesses a company-specific cash deposit rate, the "all others" rate has no applicability to its entries and, therefore, SKF has suffered no injury in fact. Without a redressable injury to SKF, Commerce claims SKF cannot have standing in this Court. Def.'s Partial Opp'n to Mots. J. Agency R. at 31-32.

The Court previously addressed this issue with respect to the "all others" rate applied to AFBs imported by SKF from Italy. In *FAG Italia*, 20 CIT at 948 F.Supp. at 73, the Court found that because Commerce calculated a company-specific cash deposit rate for SKF, the "all others" rate was inapplicable to SKF's entries. As such, SKF had failed to demonstrate injury in fact, a required element of constitutional standing.<sup>3</sup> *Id.* Consistent with its previous holding, the Court finds that SKF lacks constitutional standing to contest the use of the "all others" rate.

#### CONCLUSION

In accordance with the foregoing opinion, this case is remanded to Commerce to: (1) explain the circumstances in which it will apply the reimbursement regulation in an ESP situation; (2) apply a tax-neutral VAT methodology; (3) treat Astra and Asea Brown Boveri as unrelated to SKF; and (4) consider whether a company-specific arm's-length test is warranted and, if so, to apply such a test.

<sup>3</sup> Pursuant to Article III of the Constitution, federal courts may only adjudicate matters involving an actual case or controversy. See *Allen v. Wright*, 468 U.S. 737, 750 (1984). To demonstrate the existence of an actual case or controversy a plaintiff must demonstrate the following elements of standing: (1) "injury in fact" (i.e., an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent); (2) causation between the injury and the conduct complained of; and (3) likelihood the injury can be redressed. *Cook v. United States Senate*, 20 CIT \_\_\_\_\_. Slip Op. 96-34, at 4 (Feb. 9, 1996) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).

(Slip Op. 97-30)

ZAKI CORP., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 94-05-00304

Plaintiff moves for summary judgment pursuant to U.S. CIT R. 56 challenging the United States Customs Service's ("Customs") refusal to reliquidate certain merchandise entered into the United States. Plaintiff contends its broker was mistaken as to the physical nature of the subject merchandise, and, as a result, incorrectly entered the merchandise under the wrong subheading of the Harmonized Tariff Schedule of the United States ("HTSUS"). Plaintiff argues its broker and Customs made mistakes of fact which resulted in the incorrect classification of plaintiff's merchandise. Defendant cross-moves for summary judgment, requesting this Court deny plaintiff's motion and dismiss this action. Defendant argues plaintiff's claim for reliquidation and plaintiff's assertion of mistake of fact are improper because plaintiff has not demonstrated any mistake of fact involving either its broker or Customs. Instead, defendant maintains, plaintiff's claims only demonstrate a mistake in the application of the law, which is not remediable under 19 U.S.C. § 1520(c)(1) (1988).

*Held:* Plaintiff's motion for summary judgment is granted. Defendant's cross-motion is denied. Plaintiff's broker and Customs made a mistake of fact when the merchandise at issue was classified under subheading 8527.19.00, HTSUS, and liquidated at a duty rate of 6% *ad valorem*. At the time of entry, the first three entries should have been entered under subheading 8527.31.50, HTSUS, which assesses a duty of 4.9% *ad valorem*. Subsequent to these entries but prior to liquidation, Customs issued headquarters ruling 950882, which changed the classification and reduced the rate of duty imposed on dual cassette stereo combinations, classifying merchandise such as plaintiff's under subheading 8527.31.40, HTSUS, and assessing a duty of 3.7% *ad valorem*. As a result, these three entries should be reliquidated by Customs under subheading 8527.31.40, HTSUS and assessed a duty of 3.7% *ad valorem*. The last four entries should have been entered and liquidated under subheading 8527.31.40, HTSUS and assessed a duty of 3.7% *ad valorem*. Customs shall reliquidate the entries accordingly and refund the excess duty to plaintiff with interest as provided by law.

(Date March 14, 1997)

*Stedina & Deem (Charles P. Deem)*, Rahway, N.J., for plaintiff.

*Frank W. Hunger*, Assistant Attorney General of the United States; *Joseph I. Liebman*, Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Civil Division, United States Department of Justice, (*Mikki Graves Walser*), *Beth C. Brotman*, Office of the Assistant Chief Counsel, United States Customs Service, of Counsel, for defendant.

## OPINION

*Carman, Chief Judge:* This case is before this Court on cross-motions for summary judgment pursuant to U.S. CIT R. 56. Plaintiff, Zaki Corporation ("Zaki"), challenges the United States Customs Service's ("Customs") denial of its request pursuant to 19 U.S.C. § 1520(c)(1) (1988) for reliquidation of seven entries of stereos. Plaintiff contends the seven entries were classified under the wrong tariff provision due to a mistake of fact by plaintiff's broker and due to a subsequent mistake of fact by Customs as to the physical nature of the merchandise in question. Plaintiff seeks reclassification and reliquidation of the merchandise under 8527.31.40, HTSUS at the duty rate of 3.7% *ad valorem*, refund of the excess duty paid, as well as interest as provided by law.

Defendant contends plaintiff has not demonstrated any mistake of fact involving Customs or plaintiff's broker, but only a mistake in the construction of law, which is not remediable in the section of the statute under which plaintiff brings this action. As a result, defendant requests this Court deny plaintiff's motion, grant defendant's cross-motion and dismiss the action. This Court has jurisdiction under 28 U.S.C. § 1581(a) (1994) and this action is before the Court for *de novo* review under 28 U.S.C. § 2640(a)(1) (1994). For the reasons which follow, this Court grants plaintiff's motion for summary judgment and denies defendant's cross-motion for summary judgment.

#### BACKGROUND

##### A. Subject Merchandise:

At issue are seven entries of merchandise invoiced as (1) Hi Fi Component System, Model Numbers FH-411R, FH-B50CD, FH-E636CD, FH-E737CD, FH-B150, FH-B170 and FH-E838CD; Hi Fi Audio, Model Numbers FH B-50 CD, FH 411 R and FH 636 CD; (3) Sony Home Brand Stereo, Model Number FHB150; (4) E858 Mini Compo and (5) E656 Mini Compo (Pl.'s Stmt. of Mater. Facts Not in Issue ("Pl.'s Stmt.") at ¶ 2; Def.'s Resp. ¶ 2), consisting of dual tape cassette combination stereos, each of which incorporates a tape player incapable of recording. (Pl.'s Stmt. ¶ 4; Def.'s Resp. ¶ 4.)<sup>1</sup> The following chart lists the entries of the merchandise, as well as their dates of entry and liquidation:

Entry Number	Entry Date	Liquidation Date
917-0024666-2	4/21/92	8/14/92
917-0025277-7	6/14/92	10/23/92
917-0025702-4	8/4/92	11/27/92
917-0025850-1	8/11/92	12/4/92
917-0025981-4	8/17/92	12/11/92
917-0026033-3	8/31/92	1/22/93
917-0027148-8	12/08/92	3/26/93

<sup>1</sup> In response to an inquiry from this Court, the parties filed a stipulation with this Court on March 5, 1997, in which they stipulated and agreed that all of the model numbers at issue consisted of dual tape cassette combination stereos, each of which incorporates a tape player incapable of recording.

*B. Statutory Provisions:*

Plaintiff relies on the following provisions of the Harmonized Tariff Schedules of the United States ("HTSUS"):<sup>2</sup>

8527	Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock:
*        *	*        *
	Other radiobroadcast receivers, including apparatus capable of receiving also radiotelephony or radiotelegraphy:
8527.31	Combined with sound recording or reproducing apparatus:
8527.31.05	Articles designed for connection to telegraphic or telephonic apparatus or instruments or to telegraphic or telephonic networks * * *
	Other:
8527.31.40	Combinations incorporating tape players which are incapable of recording ..... 3.7%

Defendant relies on the following HTSUS provision:

8527	Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock:
	Radiobroadcast receivers capable of operating without an external source of power, including apparatus capable of receiving also radiotelephony or radiotelegraphy:
*        *	*        *
8527.11	Combined with sound recording or reproducing apparatus:
*        *	*        *
8527.11.20	Other:
	Radio-tape recorder combinations 4.9%
*        *	*        *
8527.19.00	Other ..... 6%
8527.31.50	Other combinations incorporating tape recorders ..... 4.9%

*C. Customs Service Classification:*

Aspen Forwarders & Customs House Brokers, Incorporated ("plaintiff's broker" or "broker") entered the merchandise at issue on behalf of

<sup>2</sup> The HTSUS provisions cited by this Court appear in HTSUS (4th ed. 1992 & Supp. 1).

plaintiff under subheading 8527.19.00, HTSUS and in the case of one entry 8527.11.20, provisions which cover radiobroadcast receivers capable of operating without an external source of power.<sup>3</sup> Customs subsequently classified and liquidated the merchandise pursuant to those subheadings and imposed duties at the rates of 6% *ad valorem* and 4.9% *ad valorem*.

#### D. Plaintiff's Request for Reliquidation:

On August 7, 1992, Customs issued Headquarters Ruling ("HQ") 950882, which changed the classification and thereby reduced the rate of duty imposed on dual cassette stereo combinations. HQ 950882 stated certain combination stereos with AM/FM radio, incorporating dual cassette decks with tape players incapable of recording, were classifiable under subheading 8527.31.40, HTSUS and dutiable at 3.7% *ad valorem*. (HQ 950882 at 2, reprinted in Mem. in Supp. of Pl.'s Mot. for Summ. J. ("Pl.'s Br.") at Ex. A.) Prior to this headquarters ruling, Customs had classified such merchandise as "other combinations incorporating tape recorders" under subheading 8527.31.50 pursuant to HQ 087179, which did not distinguish between combination stereos incorporating tape players capable or incapable of recording and which resulted in the assessment of a 4.9% *ad valorem* duty. (Mem. in Opp'n to Pl.'s Mot. for Summ. J. & in Supp. of Def.'s Cross-Mot. for Summ. J. ("Def.'s Br.") at 1-2 n.1.)

Customs officials handling the subject merchandise at the port of New York were aware of the pending or actual issuance of HQ 950882 prior to or within ninety days after liquidation of plaintiff's merchandise (Pl.'s Stmt. ¶ 6; Def.'s Resp. ¶ 6), but were unaware prior to the requests for relief under 19 U.S.C. § 1520(c)(1) that plaintiff's merchandise consisted of articles such as those covered by the ruling. (Pl.'s St. ¶ 7.)

By letters dated July 27, and August 6, 1993, more than ninety days but less than one year after the dates of liquidation, plaintiff's broker filed timely requests for reliquidation on behalf of plaintiff pursuant to 19 U.S.C. § 1520(c)(1) (1988) (Pl.'s St. ¶ 8; Def.'s Resp. ¶ 8), claiming the subject merchandise had been entered under the "wrong harmonized number," and requesting the merchandise be reliquidated under subheading 8527.31.40, HTSUS with duties assessed at a rate of 3.7% *ad valorem*. (Def. Br. at Exs. 1-7.) Plaintiff claimed its broker and Customs made mistakes of fact as to the physical nature of the stereos and did not know the merchandise consisted of dual tape combination stereos, each of which incorporated a tape player which was incapable of recording.

<sup>3</sup>In its brief, defendant states "[i]nasmuch as the protests filed by plaintiff only contest the classification of merchandise under subheading 8527.19.00, HTSUS, that merchandise is the only merchandise in issue." (Def.'s Br. at 2 n.3.) Plaintiff, however, argues "the protest is not one directed at classification decisions, but rather at distinct and separate protestable section 514 decisions not to reliquidate under section 520." (Pl.'s Resp. to Def.'s Opp'n to Pl.'s Mot. for Summ. J. at 1-2.) This Court finds plaintiff's protest dated August 6, 1993 specifically states "Item # CFS 720S was entered under [sic] wrong classification number # 8527.112040 at the rate of 4.9% instead of 3.7%," and references this item as pertaining to entry number 917-0027148-8. (Letter from Aspen Forwarders & Custom House Brokers, Inc. to U.S. Customs Service of August 6, 1993, at 1.) Plaintiff's protest of Customs' refusal to reliquidate also references the entry number. As a result, this Court finds Customs' refusal to reliquidate this entry is properly before the Court in this decision.

By letters dated September 9, 1993, Customs denied plaintiff's requests for reliquidation, determining "there is no clerical error, mistake of fact, or other inadvertence correctable under Section 520(c)(1)." (Def.'s Br. at 3.) Customs indicated the subject of plaintiff's claim fell within the scope of Section 514 of the Tariff Act of 1930, as amended, but as plaintiff had not filed its reliquidation requests within the ninety-day time limit prescribed by Section 514, Customs indicated it could not afford plaintiff review under that section of the statute. (*Id.*) After plaintiff's timely protest of Customs' denial of reliquidation, plaintiff commenced this action, challenging Customs' refusal to reliquidate the entries of the merchandise in question under 19 U.S.C. § 1520(c)(1) (1988).

#### CONTENTIONS OF THE PARTIES

##### A. Plaintiff:

Plaintiff contends its broker, Cecilia Smith, was mistaken as to the physical nature of the subject merchandise, and as a result, incorrectly entered the merchandise under subheading 8527.19.00, HTSUS, instead of under subheading 8527.31.40, HTSUS. (Pl.'s Br. at 4.) Plaintiff explains its broker mistakenly believed the imported merchandise consisted of battery-operated, portable, radiobroadcast receivers not combined with sound recording or reproducing apparatus, whereas the imports actually operate on alternating current (AC), are not battery operated and are nonportable radio broadcast receivers combined with sound recording or reproducing apparatus, *i.e.*, dual cassette tape decks, which incorporated tape players incapable of recording, as described in 8527.31.40.<sup>4</sup> (*Id.*) Plaintiff argues had the parties been aware of the true physical nature of the imports at the time they took action, the imports would have been entered under subheading 8527.31.50, HTSUS, dutiable at 6% *ad valorem*.<sup>5</sup> Plaintiff adds considering the limited description of the imports, the broker's mistake "seems reasonable." (*Id.* at 4.) Plaintiff acknowledges mistakes of law are correctable "only by timely protest," (*id.* at 5), but argues in this case, however, the broker "did not make any erroneous conclusion of law," but rather, drew the correct legal conclusion "[b]ased on the facts as she mistakenly understood them to be." (*Id.* at 4.) As a result, plaintiff argues subsequent to the expiration of the time limit for protesting the liquidations, but within one year

<sup>4</sup> In her affidavit, Cecilia Smith, the broker responsible for preparing and submitting the entries, stated at the time I made these entries, with the exception of Model No. CFS-720S in Entry No. 917-0027148-8, I mistakenly believed the imported articles covered by the protests to be radiobroadcast receivers such as were described in HTSUS subheading 8527.19.00 \* \* \*. I did not know that they were combination articles and included tape players which were incapable of recording.

[A]t the time I made entry 917-0027148-8, I believed Model No. CFS-720S to be radio-tape recorder combinations such as were described in HTSUS subheading 8527.11.20 and entered them accordingly, at the rate of 4.9%. I did not know then that they were combination articles and included tape players which were incapable of recording. (Pl.'s Br. at Ex. B.) Ms. Smith stated subsequent to the filing and entry of the articles and more than ninety days after the most recent of their liquidations, she learned of both the true nature of the imports, as well as the new HQ ruling which changed the duty rate for the merchandise at issue. (*Id.*)

<sup>5</sup> While plaintiff's brief originally argued the imports would have been entered under 8527.31.50 at a duty rate of 6% *ad valorem*, plaintiff, after consulting with defendant and obtaining defendant's concurrence with plaintiff's notice of error and request for correction, indicated in a letter to the Court dated February 13, 1997 that subheading 8527.31.50 actually assesses a duty of 4.9% *ad valorem* and not 6% *ad valorem* on merchandise covered by that subheading.

after liquidation of the entries, the broker learned of the true nature of the goods and timely filed requests for relief under 19 U.S.C. § 1520(c)(1) (1988) by seeking reliquidation of the entries and refund of the excess duties that had been paid. (*Id.* at 1-2.)

Plaintiff contends "[t]he same can be said for Customs with respect to their classification/liquidation mistakes here. Presented with the same meager invoice descriptions as confronted the broker, Customs accepted the erroneous entry classification, and liquidated the entries with no corrections or changes." (*Id.* at 4.) Plaintiff argues although some of the entries were filed prior to the new headquarters ruling on August 7, 1992, all seven entries were liquidated after that date "with incorrect classifications and duty rates\* \* \*. These mistakes of fact in the liquidations are alone sufficient to warrant reliquidation of the entries as sought by plaintiff." (*Id.* at 5.) Plaintiff argues "the mistakes of fact were adverse to the importer as a matter of law, the applicable rate of duty for \* \* \* Zaki's imports having been reduced by then from 6% to 3.7%." (*Id.*)

#### B. Defendant:

Defendant responds plaintiff's claim for reliquidation under 19 U.S.C. § 1520(c)(1) is improper because "Zaki has not demonstrated \* \* \* a 'mistake of fact' by either its broker or of Customs." (Def.'s Br. at 9.) Instead, defendant maintains, "if there was a mistake, it was a mistake which amounted to an error in the construction of law; and therefore is not cognizable under section 520(c)(1)." (*Id.* at 12.) Defendant further argues, "Customs liquidated the entries, and given the information it had at the time, classified the merchandise properly." (*Id.*) In addition, defendant adds "it is fundamental that a determination by the Customs Service that merchandise is covered by a certain provision of the HTSUS is a conclusion of law. Therefore, an erroneous classification of imported merchandise is not remediable as a mistake of fact under section 520(c)." (*Id.* at 13.) (citations omitted).

Defendant argues although the Customs Service officers were aware of the existence of HQ 950882 when the entries were liquidated, the importer's broker had no such knowledge, and "[c]onsequently, Zaki's broker would likely have entered the merchandise under the liquidated provision even if it had been aware that the merchandise incorporated a tape player incapable of recording because prior to the ruling, classification was the same whether the merchandise had that function or not." (*Id.* at 13.)

Defendant also argues plaintiff "did not demonstrate any mistake of fact to Customs within one year of liquidation with sufficient particularity to allow remedial action as required by section 520(c)(1)." (*Id.* at 6.) The letters requesting reliquidation submitted by plaintiff's broker "only alleged that the imported merchandise was entered under the wrong HTSUS provision." (*Id.* at 14.) Defendant maintains although copies of the invoices and other descriptive materials were submitted with the imported articles, "none of these documents offered guidance concerning any evaluation of a 'mistake of fact.' Zaki's documentary evi-



dence established only that there was a possible error in the construction of law \* \* \*." (*Id.* at 14-15 (footnote omitted).)

Finally, defendant counters "[i]f the broker was actually mistaken as to the nature of the imported merchandise, it should have made that mistake known to Customs by documentary evidence in a timely fashion." (*Id.* at 16 (citation omitted).) In the end, defendant suggests, plaintiff's claim that its broker made a mistake of fact in classifying the merchandise under subheading 8527.19.00, HTSUS, is an attempt to "circumvent the consequences of failing to file a timely section 514 protest." (*Id.*) Defendant argues the decision not to reliquidate the merchandise under subheading 8527.31.40, HTSUS, "was due only to the fact that a proper protest had not been filed under section 514." (*Id.* at 14-15n.6.) Defendant concludes,

plaintiff did not timely provide documentary information concerning factual error, *i.e.*, that the broker was unaware of the nature of the goods at the time of entry or liquidation; rather, it would appear that the broker made a judgment about the classification of these goods, which, it later considered incorrect \* \* \*. [P]laintiff is belatedly attempting to transform a legal error into a factual one.

(*Id.* at 17 (citation omitted).)

#### STANDARD OF REVIEW

The government's classification decision is presumed to be correct, see 28 U.S.C. § 2639 (a)(1) (1988 & Supp. V), and the party challenging the decision has the burden of overcoming the statutory presumption by a preponderance of the evidence. See *St. Paul Fire & Marine Ins. Co. v. United States*, 6 F.3d 763, 769 (Fed. Cir. 1993). Where, as here, there are no material facts in dispute and only questions of law remain, plaintiff must show legal error to overcome the presumption of correctness. See *Commercial Aluminum Cookware Co. v. United States*, Slip Op. 96-135 at 13 (CIT Aug. 13, 1996) (citations omitted). If the Court finds, because of evidence or other authority presented by plaintiff, that the presumption has been overcome, this Court must reach the correct classification on its own or after remand to the agency. See *Jarvis Clark Co. v. United States*, 2 Fed. Cir. (T) 70, 74-75, 733 F.2d 873, 878 (1984).

#### DISCUSSION

##### A. Summary Judgment:

This case is before the Court on cross-motions for summary judgment. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." U.S. CIT R. 56(d). "The Court will deny summary judgment if the parties present 'a dispute about a fact such that a reasonable trier of fact could return a verdict against the movant.'" *Ugg International, Inc. v. United States*, 17 CIT 79, 83, 813 F. Supp. 848, 852 (1993) (citation omitted). Both parties in this case agree there are no genuine issues of



material fact which would prevent this Court from deciding this action on the basis of the pending motions for summary judgment. (Pl.'s Br. at 3; Def.'s Br. at 9.)

#### B. Reliquidation:

Section 514 of the Tariff Act of 1930, as amended, sets forth the procedure for an importer to protest the classification of merchandise when the importer believes Customs has misinterpreted the applicable law and improperly classified his merchandise. *See* 19 U.S.C. § 1514 (1988); *see also Boast, Inc. v. United States*, 17 CIT 114, 116, 1993 WL 45902 \*\*1 (1993); *Occidental Oil & Gas Co. v. United States*, 13 CIT 244, 246 (1989). In general, Section 514 makes decisions regarding tariff treatment of merchandise "final and conclusive upon all persons" unless a protest is filed within ninety days of notice of liquidation. *See* 19 U.S.C. § 1514(a), (c)(2) (1988).

Section 520(c)(1) of the Tariff Act of 1930, as amended, establishes an exception to the finality of Section 514 by allowing reliquidation of imported merchandise to correct clerical errors, mistakes of fact, or other inadvertencies not amounting to errors of law, if they are brought to the attention of the appropriate customs officer within one year of the date of liquidation. *See* 19 U.S.C. § 1520 (c)(1) (1988). Section 520(c)(1) is not a remedy for all conceivable mistakes or inadvertencies adverse to the importer, but rather "offers 'limited relief in the situations defined therein.'" *PPG Industries, Inc. v. United States*, 7 CIT 118, 123, 1984 WL 3749 \*\*4 (1984) (citation omitted). Section 520(c)(1) provides in relevant part:

#### (c) Reliquidation of entry

Notwithstanding a valid protest was not filed, the appropriate customs officer may, in accordance with regulations prescribed by the Secretary, reliquidate an entry to correct—

(1) a clerical error, *mistake of fact*, or other inadvertence, *not amounting to an error in the construction of a law, adverse to the importer and manifest from the record or established by documentary evidence*, in any entry, liquidation, or other customs transaction, when the error, mistake, or inadvertence is brought to the attention of the appropriate customs officer within one year after the date of liquidation or exaction.

19 U.S.C. § 1520 (c)(1) (1988) (emphasis added). The regulation implementing this portion of the statute, provides:

#### § 173.4 Correction of clerical error, mistake of fact, or inadvertence.

(a) *Authority to review and correct.* Even though a valid protest was not filed, the district director, upon timely application, may correct pursuant to \* \* \* 19 U.S.C. 1520(c)(1), a clerical error, mistake of fact, or other inadvertence meeting the requirements of paragraph (b) of this section, by reliquidation or other appropriate action.

(b) *Transactions which may be corrected.* Correction pursuant to \* \* \* 19 U.S.C. 1520(c)(1), may be made in any entry, liquidation, or other Customs transaction if the clerical error, mistake of fact, or other inadvertence:

- (1) Does not amount to an error in the construction of a law;
- (2) Is adverse to the importer; and
- (3) Is manifest from the record or established by documentary evidence.

(c) *Limitation on time for application.* A clerical error, mistake of fact, or other inadvertence \* \* \* shall be brought to the attention of the district director at the port of entry \* \* \* within 1 year after the date of liquidation or exaction.

19 C.F.R. § 173.4 (1992). Case law is clear that "[s]ection 1520(c)(1) does not afford a second bite at the apple to importers who fail to challenge Customs' decision within the 90-day period set forth in § 1514\* \* \*." [U]nder no circumstances may the provisions of § 1520(c)(1) be employed to excuse the failure to satisfy the requirements of § 1514." *ITT Corp. v. United States*, 24 F.3d 1384, 1387n.4 (Fed. Cir. 1994). See *Boast, Inc.* 17 CIT at 116, 1003 WL 45902 \*\*3 ("It is well-established \* \* \* [§ 1520(c)(1)] 'is not an alternative to the normal liquidation-protest method of obtaining review [under § 1514], but rather affords 'limited relief' where an unnoticed or unintentional error has been committed.'" (quoting *Computime, Inc. v. United States*, 9 CIT 553, 556, 622 F. Supp. 1083, 1085 (1985) (further quotation and citations omitted))

In this case, plaintiff could not have filed protests against the liquidations because they would have been time-barred. See 19 U.S.C. § 1514 (1988). Instead, plaintiff brings its protest pursuant to 19 U.S.C. § 1520(c) (1988), arguing its broker and Customs made mistakes of fact which were adverse to the importer, manifest from the record or established by documentary evidence and brought to the attention of Customs within one year after the dates of liquidation as required by 19 U.S.C. § 1520(c)(1) (1988). (Pl.'s Br. at 6.) Defendant maintains plaintiff's protest only could have been pursued under 19 U.S.C. § 1514 (1988) and, as a result, is now untimely.

Based on the statutory provisions set forth above, the question before this Court is whether plaintiff has overcome the presumption of correctness attaching to Customs' decision not to reliquidate the entries of the subject merchandise pursuant to plaintiff's requests for reliquidation under 19 U.S.C. § 1520(c)(1). This question turns on whether Customs is correct in arguing plaintiff's broker made no mistake of fact when she classified the entries under subheading 8527.19.00, HTSUS and in one case under subheading 8527.11.20, HTSUS instead of under subheading 8527.31.40. If the mistake is one of law, as Customs maintains, plaintiff has no relief for any of the entries because plaintiff did not protest Customs' classification decision within the ninety-day period required under 19 U.S.C. § 1514(c)(2) (1988). If, however, this Court finds the

mistake is one of fact, the issue turns on whether plaintiff met the requirements of 19 U.S.C. § 1520(c)(1) (1988); 19 C.F.R. § 173.4 (1992).

### C. *The Entries at Issue:*

The first three entries were entered prior to the issuance of HQ 950882 on August 7, 1992 and were liquidated after its issuance. The last four entries were both entered and liquidated after the issuance of HQ 950882.

As set out above, the regulation implementing 19 U.S.C. § 1520(c)(1) (1988) requires three conditions be satisfied before the appropriate Customs officer is authorized to reliquidate an entry to correct a "mistake of fact."<sup>6</sup> The regulation requires the mistake to be (1) not an error in the construction of a law; (2) adverse to the importer; and (3) manifest from the record or established by documentary evidence. See 19 C.F.R. § 173.4(b)(1)-(3) (1992). This Court also notes plaintiff's letters to Customs requesting reliquidation were submitted within one year of liquidation, thus satisfying the timeliness requirement of 19 U.S.C. § 1520(c)(1) (1988).

#### (1) *Mistake of Fact:*

Plaintiff argues it satisfies the regulation's first requirement—that the mistake must be one that "[d]oes not amount to an error in the construction of a law." 19 C.F.R. § 173.4(b)(1) (1992). Plaintiff contends both its broker and Customs made mistakes of fact when they entered and liquidated the merchandise because they misunderstood its physical nature. Defendant, however, argues Customs' classification and assessment of duties was not based on a factual determination that they consisted of dual tape combination stereos incorporating a tape player incapable of recording. Rather, defendant asserts, "Customs made a legal determination \* \* \* on the basis of facts before it." (Def.'s Br. at 12.)

In *Hambro Automotive Corp. v. United States*, 66 C.C.P.A. 113, 118, 603 F.2d 850, 853 (1979) (quoting 58 C.J.S. Mistake p. 852), the United States Court of Customs and Patent Appeals held that "[a] 'mistake of fact exists where a person understands the facts to be other than what they are'" and takes some action based on that erroneous belief, "whereas a mistake of law exists where a person knows the facts as they really are but has a mistaken belief as to the legal consequences of the facts," and acts on that mistaken belief. See *Degussa Canada Ltd. v. United States*, 87 F.3d 1301, 1304 (Fed. Cir. 1996) ("A 'mistake of fact \* \* \* in [the] liquidation' is a factual error that, if the correct fact had been known, would have resulted in a different classification."); *Boast, Inc.*, 17 CIT at 116, 1993 WL 45902 \*\*1 (a mistake of fact has been defined as "a mistake which takes place when some fact which indeed exists is unknown, or a fact which is thought to exist, in reality does not exist.") (quoting *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 68 Cust. Ct.

<sup>6</sup> 19 U.S.C. § 1520(c)(1) (1988) also addresses clerical errors or other inadvertencies. Plaintiff does not contend that entry or classification by the broker or Customs involved either a clerical error or an inadvertence. Plaintiff relies solely on the "mistake of fact" element of 19 U.S.C. § 1520(c)(1) (1988).

17, 22, 336 F. Supp. 1395, 1399 (1972), *aff'd* C.C.P.A. 90, 499 F.2d 1277 (1974)) An error in the construction of law, however, would occur when

the exact physical properties of certain merchandise and all other pertinent facts for classification of that merchandise are known. In applying the law the merchandise is classified as an entirety but it should have been classified as separate articles. Or, the claim is made that an appraiser acts on incomplete information but the appraiser concludes he would have acted in the same way even if the missing information had been before him. If the appraiser errs in such a case, he commits error of law.

*PPG Industries, Inc.*, 7 CIT at 123-24, 1984 WL 3749 \*\*5 (1984) (quoting 94 Treas. Dec. 244, 246, T.D. 54848 (1959)).

Decisions of this Court have established a distinction between cases involving a mistake of law and those involving a mistake of fact based on whether the importer had actual knowledge of the nature and use of the good at issue. In cases where the Court has concluded an importer did not know the facts as they really were, and therefore lacked true knowledge of the ultimate character of the merchandise, the Court has found a mistake of fact existed. See *Universal Cooperatives, Inc. v. United States*, 13 CIT 516, 518, 715 F. Supp. 1113, 1114 (1989) (distinguishing "decisional" mistakes, where party makes wrong choice between two known alternate set of facts, and "ignorant" mistakes, where party is unaware of the existence of the correct set of facts; holding decisional mistakes must be challenged by protest under 19 U.S.C. § 1514, whereas ignorant mistakes may be remedied pursuant to 19 U.S.C. § 1520(c) (1988)); cf. *Degussa Canada Ltd.*, 87 F.3d at 1304 (holding no mistake of fact where there was no factual misapprehension about the nature of the imported merchandise); *PPG Industries, Inc.*, 7 CIT at 125, 1984 WL 3749 \*\*6 (holding mistake of law exists when importer is fully aware of the merchandise's nature but believes the legal consequences of it to be other than what they were); *Hambro Automotive Corp.*, 66 C.C.P.A. at 119, 603 F.2d at 855 (finding mistake of law exists when exporter knew the facts regarding the cost of production but erred in the assessment of those costs under the applicable law).

Based upon the above precedent, this Court finds plaintiff's broker made a mistake of fact when she entered the merchandise believing the entries to be radiobroadcast receivers instead of combination articles. This Court finds the "exact physical properties" of the merchandise were not known to the broker or to Customs in this case. This Court notes the claim in the broker's affidavit that she "mistakenly believed the imported articles covered by the protests to be radiobroadcast receivers such as were described in HTSUS subheading 8527.19.00" and "radio-tape recorder combinations such as were described in HTSUS subheading 8527.11.20" and she "did not then know that they were combination articles and included tape players which were incapable of recording." (Pl.'s Br. Ex. B. at 1) The Court also notes defendant's Response to Plaintiff's First Set of Interrogatories, which states "[t]he involved commodity team was not apprised by plaintiff, and therefore had

no knowledge, at the time of entry and/or classification, that [the entries] \* \* \* consist[ed] of dual tape cassette combination stereos." (Pl.'s Br. Ex. G at 2.) As a result, this Court finds plaintiff's broker understood the facts to be other than what they were and made a mistake of fact based on her erroneous belief.

In *C.J. Tower & Sons of Buffalo Inc. v. United States*, 68 Cust. Ct. 17, 336 F. Supp. 1395 (1972), *aff'd* 61 C.C.P.A. 90, 499 F.2d 1277 (1974), a leading case discussing what constitutes a mistake of fact sufficient to fall within the scope of Section 520(c), the Customs Court found a mistake of fact existed where neither the importer nor the Customs officer was aware that the merchandise was emergency war materials entitled to duty-free treatment until after the liquidations became final. The Court held this mistake was one of fact because the importer and the Customs Service were unaware of the nature of the materials being imported prior to liquidation and sometime thereafter. This Court subsequently noted, "under *Tower*, a mistake of fact \* \* \* is correctable under § 1520(c) when the mistake goes to the nature of the merchandise and is the underlying cause for its incorrect classification." *Boast, Inc.*, 17 CIT at 117, 1993 WL 45902 \*\* 2. (citation omitted). See *ITT Corp.*, 24 F.3d at 1387-88 (holding mistake of fact occurred in initial creation of broker's records, resulting in subsequent misclassification of entries because product was understood to be other than it actually was).

While this Court notes it is well-established that "a determination by the Customs Service that merchandise is covered by a certain provision of the TSUS is a conclusion of law," *Cavazos v. United States*, 9 CIT 628, 630 (1985), Customs must make its classification determinations based on accurate and complete information. This Court notes plaintiff's argument that although an erroneous classification of imported merchandise is not immediately remediable as a mistake of fact under 19 U.S.C. § 1520(c)(1) (1988), "[w]hen the erroneous classification results from a misunderstanding of the nature of the merchandise being classified, the misclassification may well be remediable under section 520." (Pl.'s Resp. to Def.'s Opp'n to Pl.'s Mot. For Summ. J. ("Pl.'s Resp.") at 1.) This case does not present

a typical challenge to a Customs classification where Customs evaluated the merchandise and, based on its construction of the tariff schedule, determined into which of two categories the merchandise must be placed, e.g., whether a pager should be classified as a radio receiver or as a signaling apparatus. In such a case, there is no dispute that the only proper course of action would have been to file a timely protest under section 1514.

*Executone Information Systems v. United States*, 96 F.3d 1383, 1388 (Fed. Cir. 1996). Rather, here, plaintiff's broker and Customs were unaware the merchandise consisted of stereos incorporating a tape player incapable of recording until more than ninety days after their liquidation and therefore plaintiff's broker could not have relayed that information to Customs for its consideration in classifying and liquidating

the merchandise at issue. Therefore, this Court finds Customs was unable to classify the entries properly. As a result, this Court finds plaintiff has satisfied the regulation's first requirement that the mistake of fact committed by plaintiff's broker and by Customs "not amount to an error in the construction of a law." 19 C.F.R. § 173.4(b)(1) (1992).

(2) *Adverse to the Importer:*

The regulation's second requirement mandates the mistake of fact be "adverse to the importer." 19 C.F.R. § 173.4(b)(2) (1992). This Court finds the broker's entry of the merchandise at issue under subheading 8527.19.00 and in one case under 8527.11.20, HTSUS was adverse to the importer because it resulted in the imposition of a duty rate of 6% *ad valorem* instead of a rate of 3.7% *ad valorem*. Due to the different dates of entry and liquidation, this Court will examine the first three entries and the last four entries separately.

(a) *The First Three Entries:*

The first three entries<sup>7</sup> were classified under subheading 8527.19.00, HTSUS and liquidated at a duty rate of 6% *ad valorem*. At the time of entry, the first three entries should have been classified as "other combination stereos" under subheading 8527.31.50, which assesses a duty rate of 4.9% *ad valorem* pursuant to HQ 087197, the headquarters ruling in effect at that time. (Def.'s Br. at 1-2n.1.) Subsequent to these entries but prior to liquidation, Customs issued HQ 950882, which changed the classification and reduced the rate of duty imposed on dual cassette stereo combinations, classifying merchandise such as plaintiff's under subheading 8527.31.40, HTSUS, and assessing a duty rate of 3.7% *ad valorem*.

Although the broker's mistake with respect to the first three entries occurred at the time she entered the merchandise under subheading 8527.19.00, HTSUS before the new headquarters ruling was issued, that ruling had already taken effect when Customs liquidated the first three entries. Regulation 19 C.F.R. § 177.9(a), which addresses the "[e]ffect of ruling letters generally," states "a ruling letter is effective on the date it is issued and may be applied to all entries which are unliquidated, or other transactions with respect to which the Customs Service has not taken final action on that date."<sup>8</sup> 19 C.F.R. § 177.9(a) (1992). Accordingly, this Court finds because these three entries were unliquidated as of the date of the issuance of HQ 950882, Customs should have liquidated the entries under subheading 8527.31.40, HTSUS in accordance with the new ruling and assessed duties at a rate of 3.7% *ad valorem*. Therefore, this Court holds the mistake of fact committed by the broker and subsequently by Customs when they entered and liquidated the first three entries at a duty rate of 6% *ad valorem* was adverse to the importer. This Court holds the first three entries should be reliquidated

<sup>7</sup> See chart, *supra* p.3-4.

<sup>8</sup> Although the parties did not cite to 19 C.F.R. § 177.9(a) in their papers, in accordance with *Jarvis Clark Co. v. United States*, 2 Fed. Cir. (T) 70, 733 F.2d 873, (1984), this Court reaches the correct classification decision on its own.



and assessed a duty of 3.7% *ad valorem*.<sup>9</sup> Plaintiff has satisfied the regulation's second requirement that the mistake of fact be "adverse to the importer." 19 C.F.R. § 173.4(b)(2) (1992).

*(b) The Last Four Entries:*

This Court's determination that plaintiff has satisfied the regulation's second requirement with respect to the last four entries logically follows from the fact that they were entered after the issuance of the HQ 950882. At the time plaintiff's broker mistakenly entered the goods under the wrong subheading, HQ 950882 was already in effect, changing the classification and thereby reducing the rate of duty imposed on merchandise like plaintiff's. As a result, this Court finds the broker should have entered plaintiff's entries under subheading 8527.31.40, HTSUS and Customs should have assessed a duty of 3.7% *ad valorem* instead of 6% *ad valorem*. Accordingly, this Court finds both the broker's and Customs' mistakes of fact in assessing a duty of 6% *ad valorem* instead of 3.7% *ad valorem* were adverse to the importer at the time the mistakes were made. This Court holds the last four entries should be reliquidated and assessed a duty of 3.7% *ad valorem*.<sup>10</sup> Plaintiff has satisfied the regulation's second requirement with respect to the last four entries that the mistake of fact be "adverse to the importer." 19 C.F.R. § 173.4(b)(2) (1992).

*(3) Manifest from the Record or Established by Documentary Evidence:*

The regulation's third requirement mandates that the mistake be manifest from the record or established by documentary evidence submitted to the appropriate customs officer. See 19 C.F.R. § 173.4(b)(3) (1992). Defendant argues the letters requesting reliquidation submitted by plaintiff's broker "only alleged that the imported merchandise was entered under the wrong HTSUS provision," and none of the documents submitted with the imported articles "offered guidance concerning any evaluation of a 'mistake of fact.'" (Def.'s Br. at 14.) Defendant claims "plaintiff did not provide sufficient information to Customs, or to this Court, to satisfy its claim of 'mistake of fact.'" (Def.'s Reply to Pl.'s Opp'n to Def.'s Cross-Mot. for Summ. J. ("Def.'s Reply") at 1-2.) Plaintiff, however, argues the letters to Customs requesting reliquidation

reasonable [sic] show, especially to the experienced Customs 520 claim reviewer(s) involved, that the broker had originally understood the imports to be just radios, when in fact they were Hi Fi Components, that is, dual cassette stereo decks which included tape players that were incapable of recording \* \* \*. There can be no real question but that Customs knew, from the 520 documented claims made by the broker, that "the document preparer simply understood the nature of the merchandise to be other than what it was."

(Pl.'s Resp. at 3 (citation omitted).)

<sup>9</sup> See *infra*, p.28.

<sup>10</sup> See *infra*, p.28.

This Court notes defendant's argument that neither plaintiff's entry papers nor its initial letters to Customs requesting reliquidation indicated the imported merchandise consisted of dual cassette combination stereos incorporating a tape player incapable of recording, and that the papers plaintiff submitted to Customs did not substantiate plaintiff's allegation of a mistake of fact with sufficient particularity to allow remedial action. This Court also notes, however, § 1520(c)(1) requires only that the mistake of fact be "brought to the attention of the appropriate customs officer within one year after the date of liquidation." 19 U.S.C. § 1520(c)(1) (1988). See *Everflora Miami, Inc. v. United States*, 885 F. Supp. 243, 246 (CIT 1995), *aff'd* 86 F.3d 1174 (Fed. Cir. 1996) ("Although plaintiff did not specifically claim that it was seeking relief under § 1520(c)(1), in compliance with *ITT [Corp.]* the gravamen of plaintiff's claims is spelled out with sufficient particularity in the protests and attached documents to allow remedial action for mistake of fact or other inadvertence under § 1520(c)(1) \* \* \*"); *ITT Corp.*, 24 F.3d at 1387-88 (holding this Court erred by interpreting § 1520(c)(1) as precluding at a trial *de novo* the Court's consideration of additional evidence, documentary or otherwise, which further substantiated the alleged mistake of fact). But see *Fabrene, Inc. v. United States*, 17 CIT 911, 914 (1993) (holding plaintiff failed to allege sufficient facts to support its claim that a mistake of fact was committed by Customs as contemplated by 19 U.S.C. § 1520(c)(1) (1988), where plaintiff did not allege any facts to demonstrate the existence of a mistake of fact).

In *ITT Corp. v. United States*, 24 F.3d 1384, 1388 (Fed. Cir. 1994) (citation omitted), the Federal Circuit noted "the Court of International Trade correctly recognized that the one-year provision of § 1520(c)(1) applies only to the notification to Customs of an alleged mistake of fact, and 'not \* \* \* to efforts to document the error.'" The Federal Circuit continued to note "[w]hile a prudent importer would submit all its supporting documentary evidence along with its timely notice alleging a mistake of fact before Customs' consideration in order to facilitate a prompt and favorable decision by Customs," failure to do so did not preclude other evidence from being submitted after Customs made its initial reliquidation decision. *Id.* "The remedial purpose of § 1520(c)(1) would be substantially frustrated by the harsh results that could flow from a rule that a timely assertion of a mistake of fact cannot be proven at a trial *de novo* after Customs denies the reliquidation request. *Id.* at 1389.

This Court finds plaintiff's letters requesting reliquidation under 19 U.S.C. § 1520(c)(1) (1988) due to the merchandise's entry under the "wrong" HTSUS subheading were sent within a year of liquidation, and properly "brought to the attention of the appropriate customs officer," plaintiff's alleged mistake of fact with respect to the merchandise at issue. See 19 U.S.C. § 1520(c)(1) (1988). Further, this Court finds the information contained in plaintiff's protests of Customs' denial of its request for reliquidation substantiated the alleged mistake of fact.



Plaintiff's protests state the merchandise at issue "in fact incorporates a dual cassette deck (AC) featuring a tape recorder and a tape player" \* \* \*. [T]he tape player is incapable of recording. Headquarters Ruling \* \* \* [950882] \* \* \* directs classification of such merchandise in HS 8527.31.40." *United States Customs Service Protest Nos. 10013-107413 & 10013-107414* (December 27, 1993). While plaintiff's protests of Customs's refusal to reliquidate was submitted to Customs more than one year after liquidation, this Court finds the protests are nevertheless part of the record for review by this Court in the present action. The record for review consists of all information that was before the administrative agency when it rendered its decision, and plaintiff's protests were reviewed by Customs prior to their denial. In addition, in the broker's affidavit, which was also reviewed by Customs and is before this Court as part of the record, Cecilia Smith states

subsequent to filing the entries of these articles and more than 90 days after the most recent of their liquidations, I learned that all of the imports at issue consisted of combination articles or stereos in which were incorporated dual cassette decks (AC), featuring a tape recorder and a tape player \* \* \* incapable of recording.

\* \* \* [I]n my meetings with Customs officials, at the times I filed the 520 requests, or, in any event, thereafter, but prior to the dates of their denials, I described the imports orally or provided descriptive literature and/or illustrations to Customs to show that the articles were dual cassette stereos such as were covered by HQ 950882. At no time did Customs give any indication of dissatisfaction with my proof of the identity of the imports.

(Pl.'s Br. Ex. B at 1-2.)

Further, this Court notes Customs, in its denial of plaintiff's request for reliquidation, did not state its denial was for want of sufficient proof by plaintiff that the alleged mistakes of fact were manifest from the record or established by documentary evidence, but rather because Customs determined the subject of plaintiff's claim fell within the scope of 19 U.S.C. § 1514 (1992) (Letters from Customs Protest Reviewer of September 1, 1993 denying Pl.'s requests for reliquidation). Had Customs notified plaintiff that it had not submitted sufficient proof to establish a mistake of fact, plaintiff might have been able to submit supporting evidence to Customs before the reliquidation decision. See *ITT Corp.*, 24 F.3d at 1388n. 5.

As a result of the above reasons, this Court finds plaintiff "brought to the attention of the appropriate customs officer" the alleged mistake of fact as required by the regulation and substantiated the mistake with sufficient particularity to allow remedial action. See 19 C.F.R. § 173.4(b)(3) (1992).

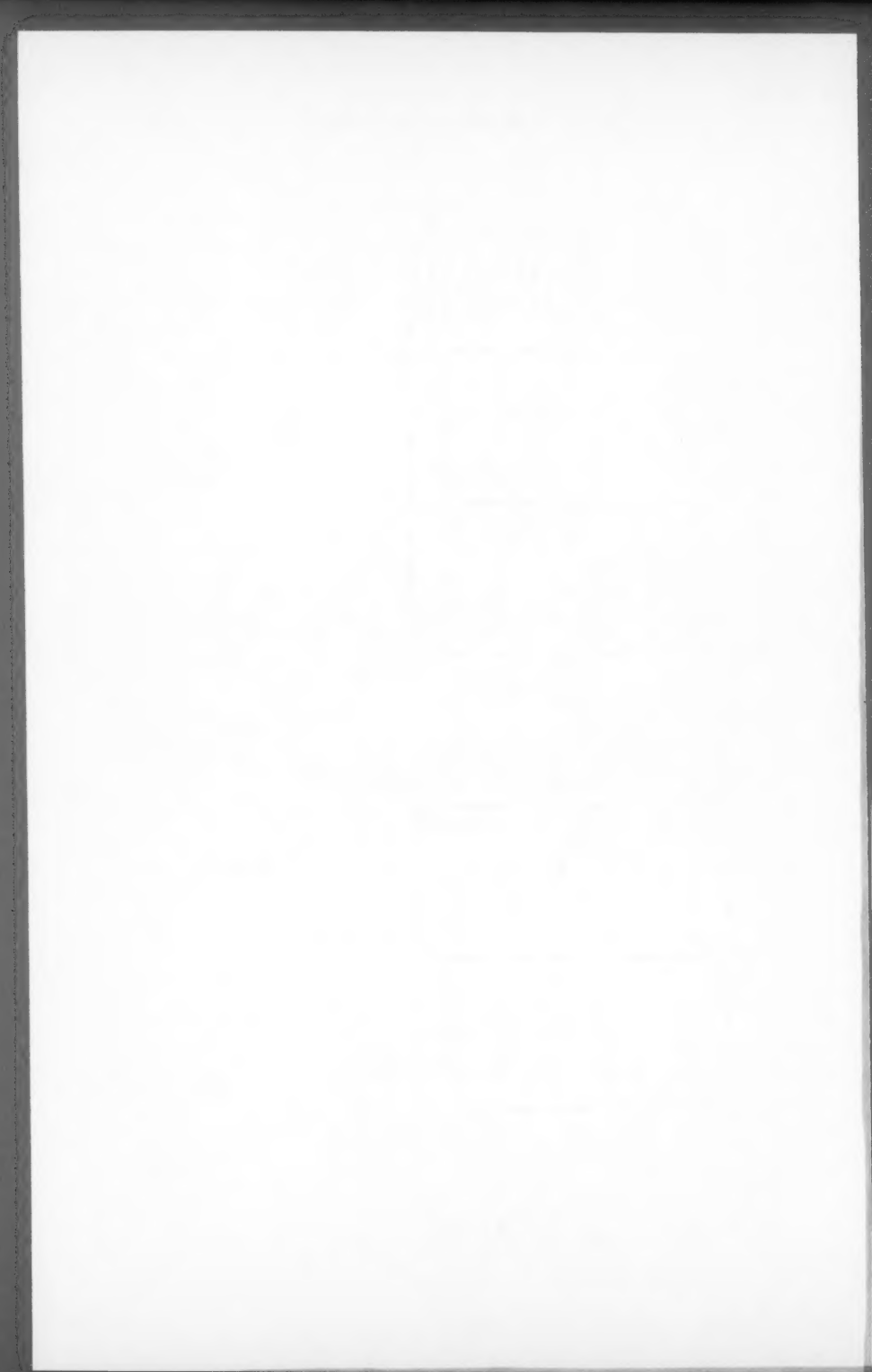
#### CONCLUSION

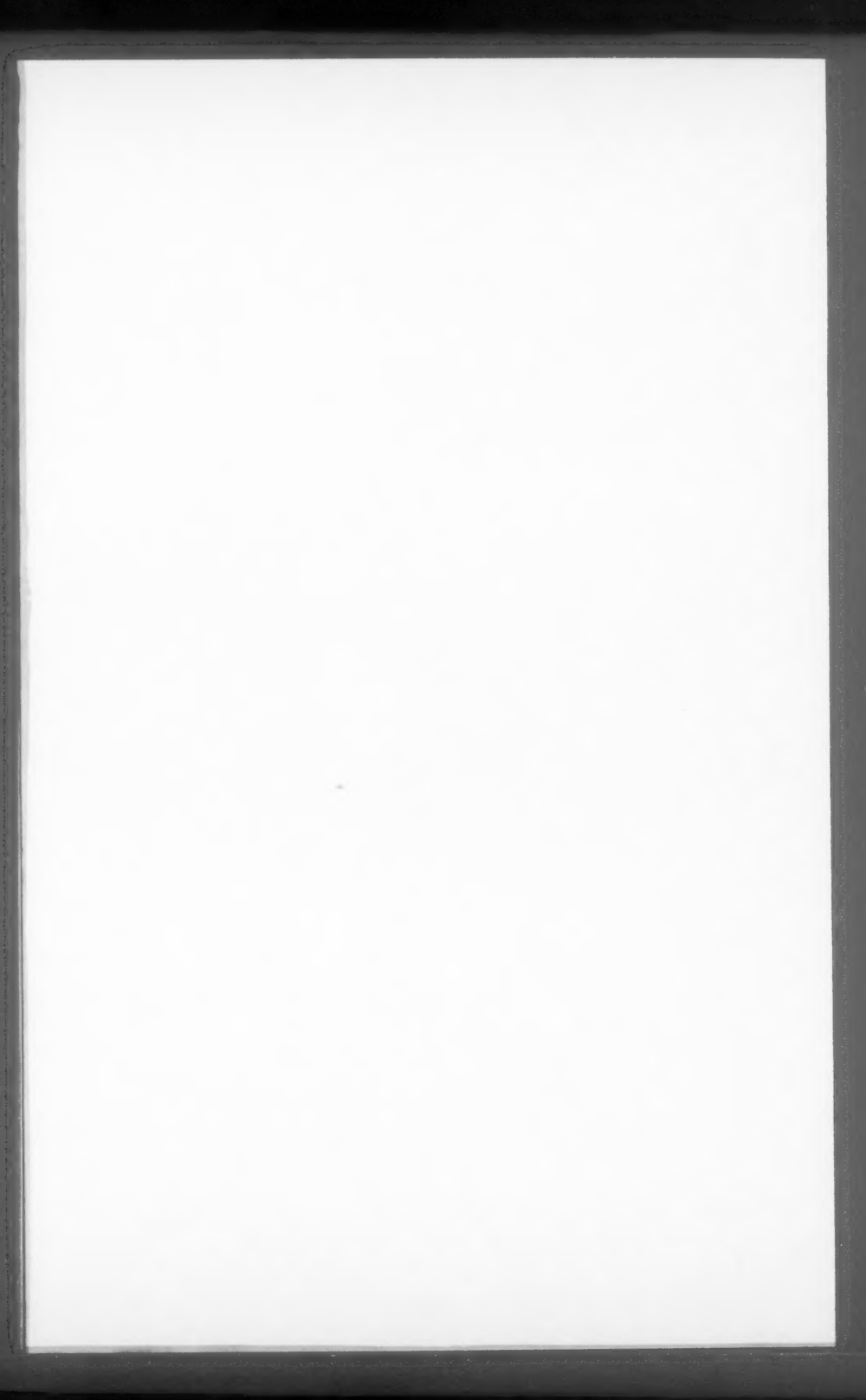
For the reasons discussed above, this Court grants plaintiff's motion for summary judgment and denies defendant's cross-motion for sum-

mary judgment. This Court finds plaintiff has overcome the presumption of correctness attached to Customs' classification. Plaintiff has satisfied 19 U.S.C. § 1520(c)(1) (1988) and the three requirements of 19 C.F.R. § 173.4(b) by demonstrating the mistake committed by plaintiff's broker and subsequently by Customs was not an error in the construction of a law, was adverse to the importer and was manifest from the record or established by documentary evidence. As a result, this Court holds Customs shall reclassify and reliquidate the seven entries under subheading 8527.31.40, HTSUS and assess a duty of 3.7% *ad valorem*. Customs shall refund excess duties to plaintiff with interest as provided by law.

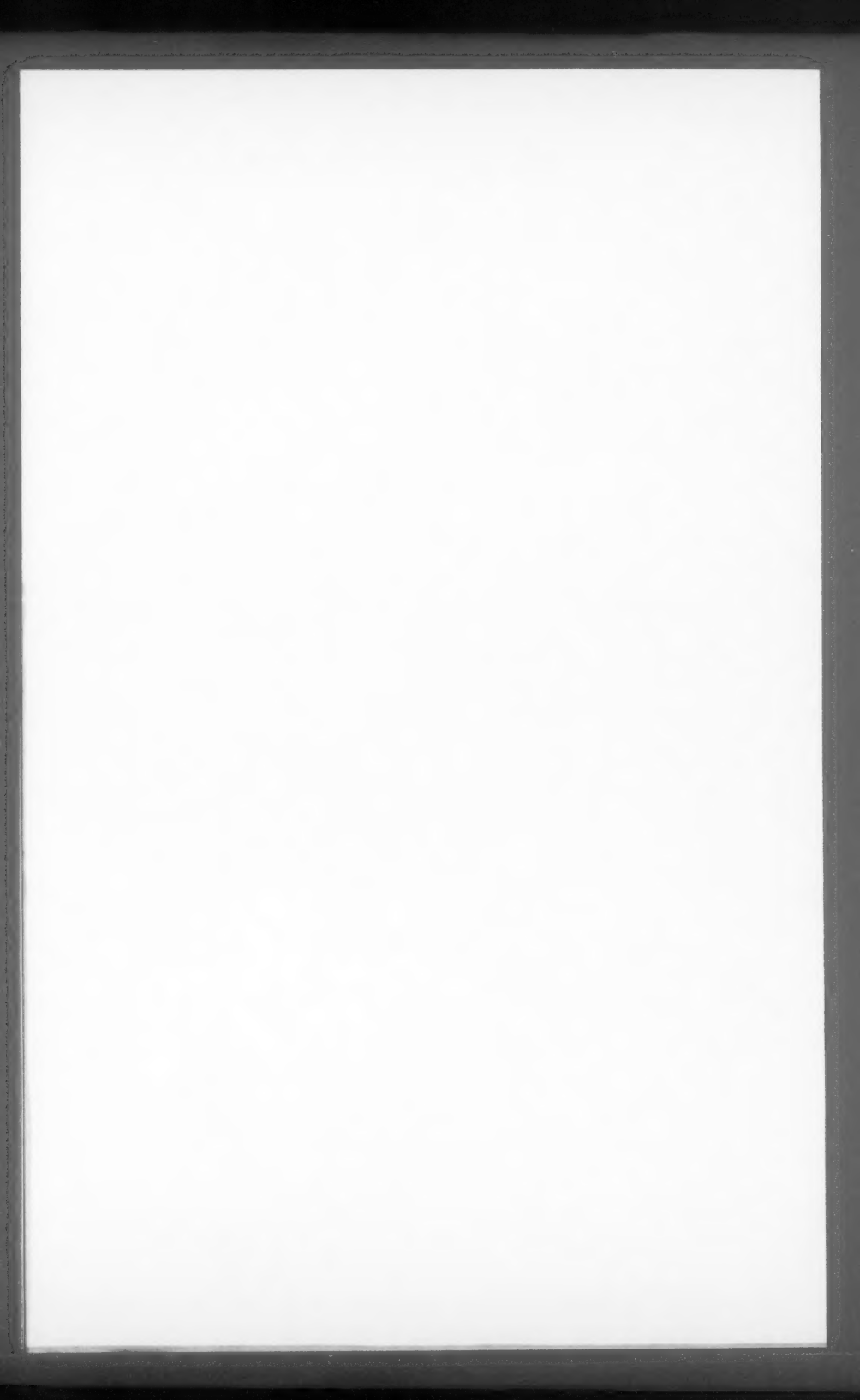
## ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C97/39 3/3/97 Aquilino, J.	World Wide Packaging, Inc.	95-07-01728	9603.29.4090 2 cents each plus 7% 9516.20.000 7.7%	3923.90.0000 3%	Agreed Statement of facts	New York Plastic empty mas- cara and lipgloss cases/empty plastic cases
C97/40 3/13/97 Wallach, J.	Construction Fasteners, Inc.	95-08-01008	7318.12.00 12.5%	7318.14.10 6.2%	Agreed Statement of facts	Philadelphia 9 gauge metal screws of various lengths
C97/41 3/13/97 Wallach, J.	Construction Fasteners, Inc.	95-08-01009	7318.12.00 12.5%	7318.14.10 6.2%	Agreed Statement of facts	Philadelphia 9 gauge metal screws of various lengths
C97/42 3/13/97 Wallach, J.	Construction Fasteners, Inc.	95-08-01010	7318.12.00 12.5%	7318.14.10 6.2%	Agreed Statement of facts	Philadelphia 9 gauge metal screws of various lengths
C97/43 3/13/97 Wallach, J.	Construction Fasteners, Inc.	95-08-01011	7318.12.00 12.5%	7318.14.10 6.2%	Agreed Statement of facts	Philadelphia 9 gauge metal screws of various lengths









the fact that the firm's reputation is a public good, the firm's reputation is a public good.

As a result, the firm's reputation is a public good. The firm's reputation is a public good.

As a result, the firm's reputation is a public good. The firm's reputation is a public good.

As a result, the firm's reputation is a public good. The firm's reputation is a public good.

As a result, the firm's reputation is a public good. The firm's reputation is a public good.

As a result, the firm's reputation is a public good. The firm's reputation is a public good.

As a result, the firm's reputation is a public good. The firm's reputation is a public good.

As a result, the firm's reputation is a public good. The firm's reputation is a public good.

As a result, the firm's reputation is a public good. The firm's reputation is a public good.

As a result, the firm's reputation is a public good. The firm's reputation is a public good.

As a result, the firm's reputation is a public good. The firm's reputation is a public good.

As a result, the firm's reputation is a public good. The firm's reputation is a public good.

As a result, the firm's reputation is a public good. The firm's reputation is a public good.

As a result, the firm's reputation is a public good. The firm's reputation is a public good.

As a result, the firm's reputation is a public good. The firm's reputation is a public good.

As a result, the firm's reputation is a public good. The firm's reputation is a public good.

As a result, the firm's reputation is a public good. The firm's reputation is a public good.



# Index

*Customs Bulletin and Decisions*  
Vol. 31, No. 14, April 2, 1997

## U.S. Customs Service

### General Notices

	Page
Dates and draft agenda of the nineteenth session of the Harmonized System Committee of the World Customs Organization .....	1
Proposed collection; comment request:	
Certificate of registration .....	7
Crew members division .....	12
Declaration of free entry of returned American products (Customs Form 3311) .....	9
Electronic entry filing .....	16
Foreign assembler's declaration (with endorsement by importer) .....	17
Free admittance under conditions of emergency .....	14
Harbor maintenance fee .....	13
Importers ID input record .....	10
Protest .....	19

### CUSTOMS RULINGS LETTERS

	Page
Tariff classification:	
Proposed revocation:	
Bridge rectifier diodes .....	21
Plastic loose leaf pencil pouches and boxes .....	34
Modification:	
"Spin Pops" .....	30

## U.S. Court of International Trade

### Slip Opinions

	Slip Op. No.	Page
Mitsuboshi Belting Ltd. v. United States .....	97-28	67
Torrington Co. v. United States .....	97-29	71
Zaki Corp. v. United States .....	97-30	84

### Abstracted Decisions

	Decision No.	Page
Classification .....	C97/39-C97/43	101



Federal Recycling Program  
Printed on Recycled Paper

U.S. G.P.O. 1996-417-405-40027



